IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

LEE WARD, JAMES SAUNDERS, and	§	
WILLIAM HOLLOWAY,	§	
on behalf of themselves and all	§	
others similarly situated,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:20-CV-371
	§	
AMERICAN AIRLINES, INC.,	§	
	§	
Defendant.	§	

DEFENDANT AMERICAN AIRLINES, INC.'S SUPPLEMENTAL APPENDIX FILED IN RESPONSE TO ORDER OF OCTOBER 16, 2020

In response to this Court's Order of October 16, 2020, American respectfully submits the this supplemental appendix with the affidavit of David Coons, Vice President for Product and Technology at Expedia, Inc., confirming the accuracy of American's description of the Expedia and Hotwire Terms of Use applicable to Plaintiffs' tickets, including their arbitration clauses. American had obtained the affidavit in light of Plaintiffs' evidentiary contentions, but did not file it at that point because briefing on the motion was completed.

EXH	DESCRIPTION	APP. PAGES
A	Declaration of David Coons, Vice President for Product and	Supp. App. 1-4
	Technology at Expedia, Inc.	
1	Plaintiffs' Amended Complaint	Supp. App. 5-57
2	Screenshot showing booking screen for Expedia	Supp. App. 58-62
3	Screenshot showing booking screen for Hotwire	Supp. App. 63-66

4	Expedia Terms of Use applicable on March 11, 2020	Supp. App. 67-92
5	Hotwire Terms of Use applicable on January 28, 2020	Supp. App. 93-115

Respectfully submitted,

/s/ Dee J. Kelly Jr.

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CERTIFICATE OF SERVICE

On this 19th day of October, 2020, I electronically submitted the foregoing Response to the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Dee J. Kelly Jr.
Dee J. Kelly Jr.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

LEE WARD, JAMES SAUNDERS, and)	
WILLIAM HOLLOWAY,)	
on behalf of themselves and all)	
others similarly situated,)	
)	
Plaintiffs,)	
)	
V.)	Civil Action No
)	4:20-cv-371-O
AMERICAN AIRLINES, INC.,)	
)	
Defendant.)	

AFFIDAVIT OF DAVID COONS IN SUPPORT OF DEFENDANT AMERICAN AIRLINES, INC.'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO COMPEL ARBITRATION

- I, **DAVID COONS**, being duly sworn, hereby deposes and says:
- 1. I am over the age of eighteen years old and am fully competent to render this affidavit.
- 2. I am the Vice President for Product and Technology at Expedia, Inc. ("Expedia"). Expedia operates a travel booking website, which, among other things, facilitates reservations between travelers and airlines.
- 3. Expedia is the parent company of Hotwire, Inc. ("Hotwire"). Hotwire also operates a travel booking website, which, among other things, facilitates reservations between travelers and airlines.
- 4. I have personally reviewed the records of Expedia and Hotwire that are relevant to the facts attested to herein, including the applicable Terms and Conditions of both Expedia and Hotwire. As such, this attestation is based upon my personal knowledge of such facts.

- 5. In the instant action, Plaintiff William Holloway alleges that on or about March 10, 2020, he purchased a ticket for travel using the Expedia website. *See* Exhibit 1, which is a true and correct copy of Plaintiffs' Amended Complaint. Plaintiff James Saunders, meanwhile, alleges that on January 28, 2020, he purchased a ticket for travel using the Hotwire website. *See id*.
- 6. Expedia users are required to complete the following procedure to complete a booking through the Expedia website: Before completion of payment, the final booking screen requires the website user to review a checklist under a "Review and book your trip" section of the website. As part of that review, a website user must acknowledge that he or she has read and accepted specific terms and policies including the Terms of Use. Website users can click through an embedded hyperlink, which is displayed in blue, to fully review the Terms of Use. By selecting the "Complete Booking" stamp, website users confirm that they have both reviewed the Expedia Terms of Use and accepted those terms without modification. *See* Exhibit 2, which is a true and correct copy of a screenshot showing a booking screen that is the same in all material respects to that which plaintiffs would have seen when they booked their airline tickets through Expedia. As relevant here, that screenshot is the same in all material respects to that which Defendant American Airlines, Inc. attached as Ex. 3 in support of its motion to dismiss Plaintiffs' First Amended Complaint and Compel Arbitration.
- 7. Hotwire users are required to complete the following procedure to complete a booking through the Expedia website: Before completion of payment, the final booking screen requires the website user to review a checklist under a "Review and book your trip" section of the website. As part of that review, a website user must acknowledge that he or she has read and accepted specific terms and policies including the Terms of Use. Website users can click through an embedded hyperlink, which is displayed in blue, to fully review the Terms of Use. By selecting the "Complete Booking" stamp, website users confirm that they have both reviewed the Hotwire Terms of Use and accepted those terms without modification. *See* Exhibit 3, which is a true and correct copy of a screenshot showing a booking screen that is the same in all material respects to that which plaintiffs would have seen when they booked their airline tickets through Hotwire. As relevant here, that screenshot is the same in all material respects to that which Defendant American Airlines, Inc. attached as Ex. 1 in support of its motion to dismiss Plaintiffs' First Amended Complaint and Compel Arbitration.

- 8. From the dates, as alleged in the Complaint, of Plaintiffs' bookings and to the present, Expedia and Hotwire website users were not able to complete a reservation without following the procedure described above and agreeing to the websites' Terms of Use.
- 9. Attached hereto as **Exhibit 4** is a true and correct copy of the Expedia Terms of Use applicable on March 11, 2020, which were readily and conspicuously available during the booking path and for review at https://www.expedia.com/lp/lg-legal. The Terms of Use are the same as those Defendant American Airlines, Inc. attached as Ex. 4 in support of its motion to dismiss Plaintiffs' First Amended Complaint and Compel Arbitration.
- 10. Attached hereto as **Exhibit 5** is a true and correct copy of the Hotwire Terms of Use applicable on January 28, 2020, which were readily and conspicuously available during the booking path and for review at https://www.hotwire.com/en/content/terms-use. The Terms of Use are the same as those which Defendant American Airlines, Inc. attached as Ex. 2 in support of its motion to dismiss Plaintiffs' First Amended Complaint and Compel Arbitration.
- 11. All Expedia and Hotwire customers are provided with a complete and unimpeded opportunity to review the applicable Terms of Use in full on Expedia's and Hotwire's websites, respectively. By booking their reservation through Expedia or Hotwire, Plaintiffs Holloway and Saunders were subject to those Terms of Use and assented to those Terms of Use, without limitation or modification.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration is executed this 18th day of September, 2020, in Seattle, Washington.

By: DAVID COONS

EXHIBIT 1

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

LEE WARD, JAMES SAUNDERS, and WILLIAM HOLLOWAY, on behalf of themselves and all others similarly situated,))) Case No. 4:20-cv-00371-O
Plaintiffs,)
V.)
AMERICAN AIRLINES, INC.,)
Defendant.))
)

AMENDED COMPLAINT - CLASS ACTION

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Plaintiffs Lee Ward, James Saunders, and William Holloway, individually and on behalf of all others similarly situated (collectively referred to herein as "Plaintiffs"), based upon personal knowledge as to their own actions and based upon the investigation of counsel regarding all other matters, file this Amended Class Action Complaint against Defendant American Airlines, Inc. ("American"), alleging as follows:

NATURE OF ACTION

- 1. This Class Action Complaint comes during a time of unprecedented hardship for many Americans. Each day brings different news regarding the novel coronavirus COVID-19. Social distancing, sheltering-in-place, and efforts to "flatten the curve" have separated loved ones from their relatives, workers from their coworkers, and further isolated those already in or at risk of further isolation. Unemployment has skyrocketed nationwide. Nearly nine in ten Americans are or have been subject to a travel restriction, all to protect the health and welfare of the nation during this public health emergency.
- 2. The separation caused by COVID-19 and related protective efforts has dramatically impacted travel, particularly air travel. The ability to travel is flat-out eliminated for many Americans, both financially and physically. A trip to the grocery store or pharmacy has been deemed a necessity and permitted; a spring break or summer trip with family or travel for a business meeting, is not.

- 3. As a result, airlines, including Defendant, have slashed flight schedules, resulting in thousands of flight cancellations for thousands of passengers. But such passengers face additional hardship if they booked their flights with American. To add to the difficulties such passengers already face, American often refuses to issue monetary refunds to passengers with cancelled flights. It does so even though all airline passengers are entitled to a refund if the airline cancels a flight, regardless of the reason the airline cancels the flight. Instead, American represents it will only rebook and/or provide travel vouchers.
- The need for monetary refunds over travel vouchers remains pressing 4. now. Travel vouchers provide little security in this public crisis, particularly where many individuals need money now to pay for basics like food and rent, not restrictive, temporary credits towards future travel.
- 5. Reflecting the need to provide individuals with such assistance, the Coronavirus Aid, Relief, and Economic Security Act ("CARES") provided a bailout to the airlines, providing them about \$58 billion in aid, including \$5.8 billion to American alone. But, despite the faucet of taxpayer money that has already begun to flow its way, American refuses to comply with the law or operate in the interests of its customers.

¹ http://s21.g4cdn.com/616071541/files/doc_news/American-Airlines-To-Receive-58-Billion-in-Payroll-Support-From-US-Department-of-the-Treasury-OPS-DIS-04-2020.pdf.

- 6. American's actions have financially damaged Plaintiffs and the Class Members. Plaintiffs requested refunds for tickets on cancelled flights and were entitled to a refund. But, like so many other passengers, American denied those requests. Not only has American breached its contract with Plaintiffs and the Class, it has engaged in unfair and deceptive conduct through its policy to refuse refunds for cancelled and/or significantly delayed flights, thereby forcing customers into a rebooked flight or travel voucher instead of returning their money.
- 7. As a result, Plaintiffs bring this action because Plaintiffs and the Class Members did not receive refunds for American cancelled flights, lost the benefit of their bargain, and/or suffered out-of-pocket loss and are entitled to recover compensatory damages, trebling where permitted, and attorney's fees and costs.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter presented by this amended complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the Class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate sum of \$5,000,000.00, exclusive of interest and costs.

- 9. Plaintiffs allege that the total claims of individual Class Members in this action are in excess of \$5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. §§ 1332(d)(2) and (6). Plaintiffs are citizens of the States of Arizona, Pennsylvania, and Texas, whereas Defendant is a citizen of Delaware and Texas for purposes of diversity. Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A). Furthermore, Plaintiffs allege that more than two-thirds of all of the members of the proposed Class in the aggregate are citizens of a state other than Texas, where this action is originally being filed, and that the total number of members of the proposed Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B).
- 10. Venue is appropriate in this District because Defendant maintains its principal place of business within the Fort Worth Division of the Northern District of Texas. In addition, one of American's largest hubs (both in terms of passengers carried and the number of departures) is Dallas/Fort Worth International Airport, which is within the Northern District of Texas. Upon information and belief, events and transactions causing the claims herein, including American's decision-making regarding its refund policy challenged in this lawsuit, has occurred within this judicial district.

11. Furthermore, by purchasing a ticket and accepting Defendant's offer of air transportation, Plaintiffs, Class Members, and Defendant agreed to a choice of law provision that specifies Texas law applies. See Exhibit A.

PARTIES

A. Plaintiff Lee Ward

- 12. Plaintiff Lee Ward is a citizen and resident of the State of Arizona. Plaintiff Ward is and continues to be immediately affected by the COVID-19 pandemic. Despite requesting and being entitled to a refund for his cancelled flight, American has refused to provide Plaintiff Ward a refund.
- 13. On January 14, 2020, Plaintiff Ward purchased tickets for travel to occur March 12, 2020 through March 31, 2020. Plaintiff Ward was planning to travel to Lima, Peru from Las Vegas, Nevada, with a layover in Los Angeles. Plaintiff Ward's return flight was scheduled from Lima, Peru to Miami, Florida and then from Miami, Florida to Las Vegas, Nevada. The portion of this flight that was booked on American—the Miami to Las Vegas return leg—was cancelled by American. Plaintiff Ward purchased the tickets through American's agent, OneTravel.com, paying American and other airlines a total of \$1,052.00 for the two tickets.
 - 14. On March 12, 2020, Plaintiff Ward traveled to Lima, Peru as planned.
- 15. On or about March 27, 2020, OneTravel.com informed Plaintiff Ward that American and Latam Airlines had cancelled his return flights home.

- 16. A few days prior to his return flight, Plaintiff Ward received a voicemail from an American Airlines customer service agent informing him that his March 31 flight from Lima, Peru to Las Vegas, Nevada had been cancelled and that the next flight American would be offering was on May 7.
- 17. Plaintiff Ward also received two automated phone calls from American. The first call advised Mr. Ward that his March 31 flight from Miami to Las Vegas had been cancelled and that he had been re-booked on a flight from Miami to Dallas and then from Dallas to Las Vegas on April 1. The automated call also advised Plaintiff Ward that he could visit AA.com to view information regarding his flight or to see other available flights.
- 18. Subsequently, Plaintiff Ward received a second automated call advising him that American Airlines had cancelled the April 1 flight from Miami to Dallas.
- 19. At Plaintiff Ward's own expense he booked a return flight home from Peru on different airlines.
- 20. Since returning from Peru, Plaintiff Ward has had repeated communications with Defendant requesting a refund.
- 21. Defendant has formally acknowledged Plaintiff Ward's refund request and has provided regular updates about the status of that request. For example, on May 3, 2020, Defendant sent Plaintiff Ward an email stating, in part, as follows:

Thank you for contacting American Airlines Customer Relations. This is an automated acknowledgement letting you know that we received

your comments. We typically respond within seven business days, but in some instances it may take a little longer. Should you need it, we have included a reference number assigned to your correspondence. It is located at the bottom of this message.

22. Defendant did not respond within seven business days but, on May 15, 2020, sent a follow up email which also did not offer a refund or any information about the refund process. The email stated, in part:

I've received your latest correspondence and the information has been noted.

Regrettably, we are unable to forward copies of our previous correspondences; however, please feel free to share our prior response with whom you desire.

Additionally, please know that American Airlines will only respond to customers/entities who contact us directly regarding any questions or concerns they may have.

- 23. American has refused to refund Plaintiff Ward for its portion of his cancelled flight back to Las Vegas.
- 24. On February 29, 2020, Plaintiff Ward purchased four tickets for travel to occur May 30, 2020 through August 3, 2020. Plaintiff Ward was planning to travel to Lima from Las Vegas, with a layover in Los Angeles. Plaintiff Ward's return flight was scheduled from Lima to Los Angeles and then to Las Vegas. The portion of this flight that was booked on American was the Los Angeles to Las Vegas portion of the return leg. Plaintiff Ward purchased the tickets through American's agent,

OneTravel.com, paying American and other airlines a total of \$2,176.36 for the four tickets.

- 25. American and other Airlines also cancelled.
- 26. Plaintiff Ward has also requested a refund for his May 30, 2020 flight from American
- 27. Despite Plaintiff Ward's repeated requests, American has refused to refund its portion of the May 30 fare.
- 28. At the time of his ticket purchases, Plaintiff Ward understood that he would be entitled to a refund if his flight was cancelled. Plaintiff Ward was actually deceived by American regarding his right to a refund and his options following American cancelled flights. Plaintiff Ward seeks a refund because he does not know when or if he will be able to use a travel voucher.

B. Plaintiff James Saunders

- 29. Plaintiff James Saunders is a citizen and resident of the State of Pennsylvania. Plaintiff Saunders is and continues to be immediately affected by the COVID-19 pandemic. Despite requesting and being entitled to a refund for his cancelled flights, American has refused to provide Plaintiff Saunders a refund.
- 30. On January 28, 2020, Plaintiff Saunders purchased five tickets for travel to occur April 9, 2020 through April 12, 2020. Plaintiff Saunders was planning to travel to New Orleans, Louisiana from Allentown, Pennsylvania, with a layover

in Charlotte, North Carolina. Plaintiff Saunders purchased the tickets through American's agent, Hotwire, paying American and other airlines a total of \$4,167.05 for the five tickets.

- 31. On or about April 4, 2020, American informed Plaintiff Saunders that it had cancelled his connecting flight between Charlotte, North Carolina and his final destination, New Orleans.
- 32. American has refused to refund Plaintiff Saunders for his cancelled flights, despite extensive efforts with both American, as well as Hotwire. In April 2020, American's agents provided Plaintiff Saunders with mixed messages regarding his right to a refund, initially recognizing (correctly) that Plaintiff Saunders was eligible for a full refund, then later in the month rejecting his refund when the refund never arrived. After Plaintiff Saunders received a letter in the mail indicating that he could receive a refund, Plaintiff Saunders again called American and American's customer service agent informed him that "their I.T. person wrote the program weird so it said refund granted but it should have said refund not granted." Instead, American informed Plaintiff that he was limited to flight credits.
- 33. At the time of his ticket purchase, Plaintiff Saunders understood that he would be entitled to a refund if his flight was cancelled. Plaintiff Saunders was actually deceived by American regarding his right to a refund and his options

following American cancelled flights. Plaintiff Saunders seeks a refund because he does not know when or if he will be able to use a travel voucher.

C. Plaintiff William Holloway

- 34. Plaintiff William Holloway is a citizen and resident of the State of Texas. Plaintiff Holloway is and continues to be immediately affected by the COVID-19 pandemic. Despite requesting and being entitled to a refund for a cancelled trip, American has refused to provide Plaintiff Holloway a refund.
- 35. On or about March 10, 2020, Plaintiff Holloway purchased two tickets for travel to occur on April 7, 2020. Plaintiff Holloway was planning to travel to Washington, D.C. from Austin, Texas, with a layover in Dallas-Fort Worth. Plaintiff Holloway purchased the tickets through American's agent, Expedia.com, paying American a total of \$114.40 for the two tickets.
- 36. Prior to his departure, American informed Plaintiff Holloway that it had cancelled his flights.
- 37. Plaintiff Holloway's efforts to obtain a refund for his tickets have been unsuccessful. In April 2020, Plaintiff Holloway and/or his wife attempted to obtain a refund from Defendant for these cancelled flights, explaining the situation, and receiving standardized responses that American could not give him a refund. In addition, American agents told Plaintiff Holloway to speak with his travel agent,

while the travel agent's representative told him to speak with American, adding an additional layer of difficulty to Plaintiff Holloway's refund attempts.

38. At the time of his ticket purchase, Plaintiff Holloway understood that he would be entitled to a refund if his flight was cancelled. Plaintiff Holloway was actually deceived by American regarding his right to a refund and his options following American cancelled flights. Plaintiff Holloway seeks a refund because he does not know when or if he will be able to use a travel youcher.

D. Defendant American Airlines, Inc.

39. Defendant American Airlines, Inc. is a Delaware corporation authorized to do business in Texas as a foreign corporation with a principal place of business at 1 Skyview Drive, Fort Worth, Texas 76155.

FACTS

A. Background

- 40. In a typical service scenario, American operates 6,800 flights to over 350 airports in over 55 countries, with domestic hubs in Charlotte, Chicago–O'Hare, Dallas/Fort Worth, Los Angeles, Miami, New York–JFK, New York–LaGuardia, Philadelphia, Phoenix, and Washington, D.C.
- 41. In 2019, American carried over 200 million customers, utilizing over 900 Airbus, Boeing, and Embraer aircraft. For its services, American posted \$45.7 billion in operating revenue in the year ending December 31, 2019.

- 42. American sells its airline seat inventory and fares through the American's direct channels (such as American's direct-to-consumer sales website, www.aa.com, and the company's mobile applications) and through traditional travel agencies and online travel agencies. With each ticket sale, American collects passenger identification information, including name, address, and telephone information.
- 43. American has alliances with Air Tahiti Nui, Alaska Airlines, British Airways, Cape Air, Caribbean Airlines, Cathay Dragon, Cathay Pacific, China Southern Airlines, El Al, Fiji Airways, Finnair, Gol Transportes Aéreos, Hainan Airlines, Hawaiian Airlines, Iberia, Interjet, Japan Airlines, Jetstar Airways, Jetstar Japan, Korean Air, Malaysia Airlines, Qantas, Qatar Airways, Royal Jordanian, Seaborne Airlines, and SriLankan Airlines through its OneWorld alliance program.
- 44. But regardless of the method by which American sells its tickets, American has breached its passenger contracts and engaged in unfair, deceptive, and unjust conduct through its refusal to issue refunds to passengers for coronavirus-related flight cancellations.

B. The Novel Coronavirus Shutdowns and American's Resulting Flight Cancellations

45. On December 31, 2019, governmental entities in Wuhan, China confirmed that health authorities were treating dozens of cases of a mysterious, pneumonia-like illness. Days later, researchers in China identified a new virus that

had infected dozens of people in Asia, subsequently identified and referred to as the novel coronavirus or COVID-19. By January 21, 2020, officials in the United States were confirming the first known domestic infections of COVID-19.

- 46. Due to an influx of thousands of new cases in China, on January 30, 2020, the World Health Organization officially declared COVID-19 as a "public health emergency of international concern."
- 47. The U.S. State Department warned travelers to avoid traveling to China and on January 31, 2020, the U.S. federal government restricted travel from China, thus beginning travel restrictions affecting passengers ticketed on domestic and international air travel to and from the United States.
- 48. That same day, January 31, 2020, the U.S. Health and Human Services Secretary "determine[d] that a public health emergency exists and has existed since January 27, 2020, nationwide."²
- 49. By February 29, 2020, COVID-19 restrictions continued to spread across the globe. As the number of global cases rose to nearly 87,000, the U.S. federal government issued its highest-level warning, known as a "do not travel" warning for areas in Italy and South Korea that are most affected by the virus. The

https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-21apr2020.aspx.

² https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx

The U.S. Department of Health & Human Services' declaration that a public health emergency exists was renewed on April 21, 2020, *see*

government also banned all travel to Iran and barred entry to any foreign citizen who had visited Iran in the previous 14 days.

- 50. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. That same day, U.S. officials announced yet another travel ban expansion, this time blocking most visitors from continental Europe to the United States.
- 51. On March 13, 2020 the President of the United States of America issued the *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak ("Proclamation")*, proclaiming the COVID-19 outbreak constituted a national emergency in the United States, beginning March 1, 2020.³
- 52. Travel restrictions domestically began on March 16, 2020, with seven counties in the San Francisco, California area announcing shelter-in-place orders. Other states, counties, and municipalities have followed the shelter-in-place orders and as of the drafting of this Class Action Amended Complaint, 316 million people in at least 42 states, 3 counties, 9 cities, the District of Columbia, and Puerto Rico are being urged to stay home.

³ https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.

- 53. Indeed, various states, including Plaintiffs' home states and destinations, issued and implemented mandatory Stay-At-Home Orders. They are:
 - Alabama, effective April 3, 2020
 - Alaska, effective March 28, 2020
 - Arizona, effective March 31, 2020
 - California, effective March 19, 2020
 - Colorado, effective March 26, 2020
 - Connecticut, effective March 23, 2020
 - Delaware, effective March 24, 2020
 - District of Columbia, effective March 30, 2020
 - Florida, effective April 3, 2020
 - Georgia, effective April 3, 2020
 - Hawaii, effective March 25, 2020
 - Idaho, effective March 25, 2020
 - Illinois, effective March 21, 2020
 - Indiana, effective March 24, 2020
 - Kansas, effective March 30, 2020
 - Kentucky, effective March 26, 2020
 - Louisiana, effective March 23, 2020
 - Maine, effective April 2, 2020

- Maryland, effective March 30, 2020
- Massachusetts, effective March 24, 2020
- Michigan, effective March 24, 2020
- Minnesota, effective March 27, 2020
- Mississippi, effective April 3, 2020
- Missouri, effective April 3, 2020
- Montana, effective March 28, 2020
- Nevada, effective April 1, 2020
- New Hampshire, effective March 27, 2020
- New Jersey, effective March 21, 2020
- New Mexico, effective March 24, 2020
- New York, effective March 22, 2020
- North Carolina, effective March 30, 2020
- Ohio, effective, March 23, 2020
- Oklahoma, effective March 24, 2020
- Oregon, effective March 23, 2020
- Pennsylvania, effective April 1, 2020
- Rhode Island, effective March 28, 2020
- Tennessee, effective April 2, 2020
- Texas, effective April 2, 2020

- Virginia, effective March 30, 2020
- Vermont, effective March 25, 2020
- Washington, effective March 23, 2020
- West Virginia, effective March 24, 2020
- Wisconsin, effective March 25, 2020.
- 54. On March 29, 2020, the President of the United States of America announced the extension of social distancing guidelines until April 30, 2020.
- 55. On March 31, 2020, the United States Department of State issued a Global Level 4 Health Advisory not to travel.⁴

C. American's Flight Cancellations Mount

- 56. As the restrictions expanded and virus fears mounted, American cancelled flights in the United States because of the spreading impact of the coronavirus.
- 57. On March 10, 2020, American announced it was reducing international capacity 10% and domestic capacity 7.5%, with continued adjustments as needed. Among the cuts was a 55% slash in trans-Pacific travel.

⁴ https://travel.state.gov/content/travel/en/traveladvisories/ea/travel-advisory-alert-global-level-4-health-advisory-issue.html.

- 58. On March 13, 2020, American announced it would be reducing its international flight capacity another 34%, including a 50% reduction in April trans-Atlantic flights.
- 59. On March 16, 2020, American announced it was reducing international capacity by 75% year over year—from March 16 to May 6—and further anticipated that its domestic capacity in April would be reduced by 20% compared to last year, and May's domestic capacity will be reduced by 30% on a year over year basis.
- 60. The announced reductions meant that American was grounding 55,000 flights in April and was parking 450 planes—about half of its fleet—in response to decreased demand and travel restrictions due to the COVID-19 pandemic.
- 61. All long-haul international flights were suspended through May 6, including all routes from Miami International Airport to Aruba, Brazil, Chile, Colombia, Ecuador, Guatemala, El Salvador, Saint Maarten, and Peru.
- 62. On March 27, 2020, American announced it was suspending 60% of its capacity in April as compared to the same period in 2019 and was planning to suspend up to 80% of its capacity in May compared to the same period in 2019.
- 63. Ultimately, on April 2, 2020, American announced that it was suspending more than 60% of its total international capacity this summer compared to the same peak period in 2019, which included an 80% reduction in Pacific

capacity, 65% reduction in Atlantic capacity, and 48% reduction in Latin America capacity.

D. American's Refusal of Passenger Refunds for Cancelled Flights

- 64. As American announced flight cancellations (combined with decreased domestic bookings), American took a variety of steps to make it difficult, if not impossible, for consumers to receive any refund on pandemic cancelled flights. Defendant wanted to retain the money paid to Defendant, given the severe economic losses it is incurring related to pandemic flight cancellations. It did so despite consumers' right to receive a refund for unused transportation, even for non-refundable tickets.
- 65. Pursuant to their Conditions of Carriage, if American cancelled a flight or changed a flight time by over four hours, passengers could receive a full refund, even for a "non-refundable" ticket.
- 66. However, American is focused on keeping passenger money through providing travel credits, not refunds. The front page of www.aa.com has a "Coronavirus Travel Updates" banner and a blue link entitled "Travel updates and making changes to your trip" that encourage consumers to change or cancel their flight. The "Coronavirus Travel Updates" section of the website notes a customer is "allowed to make a change to your trip once" and details that American will waive the change fee.

- 67. With regard to cancelled flights, the "Coronavirus Travel Updates" section of the website states "We'll send you an email with the information you'll need, including your ticket number. Keep this handy so you can refer to it when you call Reservations to rebook."
- 68. A refund request form is not referenced on American's "Coronavirus Travel Updates," and is only located by searching the website specifically for the refund request form. American also informs customers that it will "process cash and check refunds within 20 days of receiving all your paperwork."
- 69. American's policy changes due to the pandemic primarily focus on encouraging consumers to change their flight.
- 70. Indeed, under its current Coronavirus Travel Updates page, American continues to hide passengers' rights to a refund for cancelled flights:⁵

If your flight is canceled

We'll send you an email with the information you'll need, including your ticket number. Keep this handy so you can refer to it when you call Reservations to rebook.

Contact Reservations »

71. American's approach to refunds follows its stated liquidity concerns.

As noted in the company's Form 10-Q Quarterly Report for the period ending March
31, 2020:6

In light of the effect COVID-19 is having on demand for air travel and, in turn, capacity, we have seen an increase

⁵ https://www.aa.com/i18n/travel-info/coronavirus-updates.jsp (last visited July 10, 2020).

⁶ https://americanairlines.gcs-web.com/static-files/aa139a6e-987e-405c-912c-655b3662a641.

in demand from consumers for refunds on their tickets, and we anticipate this will continue to be the case for the near future. Requests for refunds may reduce our liquidity and risk triggering liquidity covenants in these processing agreements and, in doing so, could force us to post cash or other collateral with the credit card processing companies in respect of advance ticket sales. The imposition of holdback requirements, up to and including 100% of relevant advanced ticket sales, would materially reduce our liquidity. Likewise, other of our commercial agreements contain provisions that allow other entities to impose less-favorable terms, including the acceleration of amounts due, in the event of material adverse changes in our financial condition. For example, we maintain certain letters of credit, insurance- and surety-related agreements under which counterparties may require collateral, including cash collateral.

E. The Department of Transportation Repeatedly Reminds Airlines Regarding Their Refund Obligations

- 72. American's efforts to refuse and deny customers refunds also contradicts established transportation requirements that operate for the benefit and protection of airline consumers.
- 73. According to the Department of Transportation: "If your flight is cancelled and you choose to cancel your trip as a result, you are entitled to a refund for the unused transportation—even for non-refundable tickets. You are also entitled to a refund for any bag fee that you paid, and any extras you may have purchased, such as a seat assignment."

⁷https://www.transportation.gov/individuals/aviation-consumer-protection/flight-delays-cancellations.

74. Put another way, "[a] passenger is entitled to a refund if the airline cancelled a flight, regardless of the reason, and the passenger chooses not to be rebooked on a new flight on that airline."

75. Passengers are similarly entitled to a refund if an airline makes "a significant schedule change and/or significantly delays a flight and the passenger chooses not to travel."

76. Not only is American refusing to refund passengers for cancelled flights, American is misleading passengers about their rights, including their rights under the Conditions of Carriage, by making it difficult to locate information about refunds, refusing refunds, unilaterally providing travel vouchers if a passenger is unable to contact an American customer service representative, and waiting until the last minute to cancel flights to induce passengers to cancel their flights.

77. Indeed, under the Conditions of Carriage, American explicitly notes that such requirements apply to Plaintiffs and the Class Members: "If these Conditions of Carriage conflict with applicable laws, rules, or security directives from U.S. or foreign government agencies, the applicable laws, rules, or security directives will govern." See Exhibit A.

⁸ https://www.transportation.gov/individuals/aviation-consumer-protection/refunds.

⁹ Id.

F. Complaints Regarding American's Refusal to Provide Passengers Refunds for Cancelled Flights Abound

78. Customer complaints about Defendant's refund process have received widespread attention on the Internet and media outlets such as *USA Today* and the "Travel Troubleshooter" column in many newspapers. NBC5 in Dallas-Fort Worth even ran an expose on a local victim of Defendant. One example of the innumerable complaints illustrates the frustration of consumers seeking refunds from American:

American Airlines is Openly Defying DOT Refund Regulations

We recently wrote about the rules for <u>airline refunds</u>. Those regulations dictate that an airline must process a credit card refund within 7 business day. The Department of Transportation even went so far as to put an <u>enforcement notice</u> out to airlines to remind them of its refund policies. Delta and other airlines have <u>class action</u> <u>lawsuits</u> filed already for alleged violations of these rules.

Well, I'm now having trouble getting my refund. Over 14 days ago, I contacted American Airlines to request a refund. My husband and I had a flight to Miami for the end of this week. American canceled our flight. Under AA's policy for tickets originally issued before April 8, 2020, that cancelation warrants a full refund if we decide to not want to take another flight. Due to the uncertainty of the outbreak, we decided to cancel the flight.

AA Customer Relations

I received a refund denial email today claiming that we voluntarily canceled the flight. Immediately, I called AA and inquired about the response to our refund request. I mentioned that the agent told me the flight was refundable at the time of cancelation. I also mentioned DOT regulations require a full refund for canceled flights. Under AA's policy noted above and DOT regulations, the flight was fully refundable.

The customer service representative informed me that even if it was refundable, it is taking a long time to get refunds. Again, I noted the policy laid out by DOT that requires a processed refund within 7 business days. As of today, over two weeks after canceling, the refund isn't processed.

The agent called another customer relations agent. The agent informed her that we have to wait up to 10 more days for the refund to be processed. That means that it will be over three weeks by the time the refund will be processed since we originally canceled it.

American Airlines Told Us To Be Flexible

The customer service representative then old us to be "flexible" because AA is going through a hard time. However, this is not a matter of a few days. AA was politely reminded of that rule and in response told us to be flexible. That means the airline is openly ignoring federal government regulations.

I am submitting a complaint to the DOT. I'm doing that because it's important to hold the airlines accountable during this time. It's interesting we got an email denying the refund, but as soon as we highlighted DOT regulations and AA's own policy, the agent told us the email was sent in error.

When Do Airlines Give Flexibility?

It's interesting for AA to tell a customer to be flexible, when they are so inflexible on a day-to-day basis. In the normal course of their business, AA doesn't take the time to be flexible when its customers need them to. In fact, AA eliminated their bereavement leave policy for passengers several years ago. And when passengers are stuck at a destination due to weather or mechanical issues they don't exactly jump to try to help clients with dire needs. It doesn't matter what your reason for needing flexibility (a job loss, death in the family, etc.), there are few circumstances where AA will be flexible with you.

Bottom Line

I'd like to see if this is a line given to other people while dealing with AA. Has an AA customer service representative told you to be "flexible"? Two customer service representatives used the same line, and the reality has been that we have waited more than double the amount of time required for a refund. So one has to believe this is AA's current policy. If that is the case, I hope DOT holds them accountable for openly defying regulations. Other airlines have class action lawsuits against them, but I haven't seen one yet for American. These regulations are in place to protect consumers, and that's an important thing to stand by right now.

- 79. Clearly, the problems suffered by Plaintiffs were systematic and illustrate Defendant's uniform policy and practice to avoid refunds at all costs.
- 80. On April 3, 2020, the U.S. Department of Transportation ("DOT") disclosed that it "is receiving an increasing number of complaints and inquiries from ticketed passengers, including many with non-refundable tickets, who describe having been denied refunds for flights that were cancelled or significantly delayed." The DOT reminded carriers, including American, of their "longstanding obligation to provide a prompt refund to a ticketed passenger when the carrier cancels the passenger's flight or makes a significant change in the flight schedule and the passenger chooses not to accept the alternative offered by the carrier."¹⁰
- 81. And more recently, on May 12, 2020, the DOT reiterated that continued efforts by airlines, including United, resulted in the release of a second enforcement

 $^{^{10}}$ https://www.transportation.gov/sites/dot.gov/files/2020-04/Enforcement%20 Notice%20Final%20April%203%202020.pdf.

notice.¹¹ Under that notice, the DOT restated that "airlines have an obligation to provide a refund to a ticketed passenger when the carrier cancels or significantly changes the passenger's flight, and the passenger chooses not to accept an alternative offered by the carrier."

82. Sensitive to such consumer complaints, members of the U.S. Senate have urged American in a joint letter to provide full cash refunds to passengers with cancelled flights during the pandemic:

We write to urge your airline to issue full cash refunds to all customers who cancel their flights during the COVID-19 crisis, and to American citizens who encounter flight cancellations while stranded in countries that implemented travel restrictions. The ongoing pandemic is placing enormous financial strain on millions of Americans, and families need cash to pay for essentials such as food, housing, and medical care. In light of this pressing need and the unprecedented bailout—to the tune of \$25 billion—that the airline industry just received from Congress, we believe your company has a moral responsibility to provide real refunds, not travel vouchers, to consumers, and to support State Department efforts to repatriate any American citizens trying to come home. 12

83. American not only has a moral responsibility to provide real refunds, it has a legal obligation to do so, particularly in light of the substantial bailout it received from American taxpayers, including Plaintiffs and the Class Members.

https://www.transportation.gov/sites/dot.gov/files/2020-05/Refunds-%20Second%20Enforcement%20Notice%20FINAL%20%28May%2012%202020%29.pdf.

¹² Letter to Doug Parker, CEO of American Airlines, from U.S. Senator Edward J. Markey, et al. (March 31, 2020).

CLASS ACTION ALLEGATIONS

84. Plaintiffs sue under Rule 23(a), (b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Class defined as follows:

All persons in the United States who purchased tickets for travel on American Airlines flights scheduled to operate to, from, or within the United States from March 1, 2020 to the date of class certification and who were not issued a refund for cancelled and/or significantly changed flights.

Plaintiffs also intend to certify subclasses for claims on behalf of Class Members in their respective home states. Excluded from any Class or Subclass is Defendant, any entity in which Defendant has a controlling interest, and Defendant's legal representatives, predecessors, successors, assigns, and employees. Further excluded from any Class or Subclass is this Court and its employees. Plaintiffs reserve the right to modify or amend the Class definition, as appropriate, during this litigation.

- 85. The definition of the Class is unambiguous. Plaintiffs are members of the Class they seek to represent. Class Members can be notified of the class action through ticketing contact information and/or address lists maintained in the usual course of business by Defendant.
- 86. Under Rule 23(a)(1), Class Members are so numerous and geographically dispersed that their individual joinder of all Class Members is impracticable. The total number of members of the proposed Class is greater than 100 and exceeds the number required for jurisdiction under 28 U.S.C. § 1332(d)(2)

and (d)(5)(B). Given the thousands of flight cancellations made by American, that number greatly exceeds the number to make joinder possible. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

- 87. American has acted or refused to act on grounds generally applicable to Plaintiffs and the Class Members, making appropriate final injunctive relief and declaratory relief regarding the Class under Rule 23(b)(2), particularly those aspects of injunctive relief that seek to require American adhere to its voluntary undertakings and agreements with Plaintiffs and the Class Members.
- 88. Plaintiffs show that common questions of law and fact predominate over the questions affecting only individual Class Members under Rule 23(a)(2) and (b)(3). Some of the common legal and factual questions include:
 - a. Whether Defendant engaged in the conduct alleged;
 - b. Whether Plaintiffs and the Class Members are owed refunds for cancelled and/or significantly delayed flights;
 - c. Whether Defendant has a policy and/or procedure of denying refunds to Plaintiffs and Class Members for cancelled flights;

- d. Whether Defendant's policy and/or procedure of denying refunds to passengers on cancelled flights is unfair, deceptive, and/or misleading;
- e. Whether Texas law applies to the nationwide class;
- f. Whether Defendant breached its contracts with Plaintiffs and the Class Members;
- g. Whether Defendant violated consumer protection statutes and/or false advertising statutes and/or state deceptive business practices statutes;
- h. Whether Defendant violated the common law of unjust enrichment;
- i. Whether Defendant converted Plaintiffs' and the Class
 Members' refunds and/or rights to refunds;
- j. Whether Defendant made fraudulent misrepresentations to
 Plaintiffs and the Class Members;
- Whether the doctrine of promissory estoppel applies to bar
 Defendant from denying Plaintiffs' and the Class Members'
 refunds; and

- The nature and extent of damages and other remedies to which the conduct of Defendant entitles Plaintiffs and the Class Members.
- 89. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by the Class Members. Similar or identical statutory and common law violations and deceptive business practices are involved. Individual questions pale by comparison to the numerous common questions that predominate.
- 90. The injuries sustained by the Class Members flow, in each instance, from a common nucleus of operative facts under Rule 23(a)(2)—Defendant's breaches of an identical contract and misconduct. In each case Defendant has cancelled flights yet denied refunds to Class Members for such cancelled flights.
- 91. The Class Members have been damaged by Defendant's breaches and misconduct through American's practice of cancelling flights, yet denying refunds to Class Members for such cancelled flights.
- 92. Plaintiffs' claims are typical of the claims of the other Class Members as required by Rule 23(a)(3). Plaintiffs paid for airline tickets, did not receive a refund for their cancelled flights, and were actually deceived.
- 93. Plaintiffs show they and their counsel will fairly and adequately protect the interests of the Class as required by Rule 23(a)(4). Plaintiffs are familiar with the

basic facts that form the bases of the Class Members' claims. Plaintiffs' interests do not conflict with the interests of the other Class Members they seek to represent. Plaintiffs have retained counsel competent and experienced in class action litigation and intend to prosecute this action vigorously. Plaintiffs' counsel has successfully prosecuted complex class actions, including breach of contract and consumer protection class actions. Plaintiffs and Plaintiffs' counsel will fairly and adequately protect the interests of the Class Members.

- 94. Consistent with Rule 23(b)(3), the class action device is superior to other available means for the fair and efficient adjudication of the claims of Plaintiffs and the Class Members. The relief sought per individual members of the Class is small given the burden and expense of individual prosecution of the potentially extensive litigation necessitated by the conduct of Defendant. It would be virtually impossible for the Class Members to seek redress individually. Even if the Class Members themselves could afford such individual litigation, the court system could not.
- 95. The Northern District of Texas is also a desirable forum under Rule 23(b)(3)(C) because Defendant is headquartered in the Northern District of Texas, made pertinent decisions within this District, and information and relevant documents are expected to exist within this District.

- 96. Further, under Rule 23(b)(3)(D), individual litigation of the legal and factual issues raised by the conduct of Defendant would increase delay and expense to all parties and to the court system. The class action device presents far fewer management difficulties and provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive supervision by a single court. Given the similar nature of the Class Members' claims and the absence of material differences in the state statutes and common laws upon which the Class Members' claims are based, a nationwide Class will be easily managed by the Court and the parties.
- 97. Plaintiffs allege that the total claims of individual Class Members in this action are in excess of \$5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. §§ 1332(d)(2) and (6) due to the thousands of flight cancellations made by American.

CAUSES OF ACTION

COUNT I

BREACH OF CONTRACT

- 98. Plaintiffs restate, re-allege, and incorporate herein by reference the preceding paragraphs as if fully set forth herein.
- 99. Defendant made offers to Plaintiffs and the Class Members to enter into a contract for Defendant to provide transportation services to Plaintiffs and the Class

Members through passenger tickets for air travel between specific locations, on specific flight numbers, on specific dates and times, at specific prices.

- 100. Defendant's offer to provide transportation services to Plaintiffs and the Class Members also included Defendant's offers and terms that it would refund passengers for all cancellations and/or significantly changed flights.
- 101. At all times relevant, such offers and terms were specifically identified in Defendant's Conditions of Carriage entered into between Plaintiffs and the Class Members on one hand, and Defendant on the other, at the time of ticket purchases.
- 102. The Conditions of Carriage reflect Defendant's self-imposed terms and obligations voluntarily undertaken by Defendant.
- 103. Moreover, Plaintiffs and the Class Members did not draft the terms of the Conditions of Carriage, rather, on information and belief, Defendant (and/or Defendant's agents at Defendant's direction) drafted all terms therein.
- 104. Defendant made such offers in writing through American's direct channels (such as American's direct-to-consumer sales website, www.aa.com, and the company's mobile applications) and through traditional travel agencies and online travel agencies.
- 105. Numerous sections of the Conditions of Carriage applicable at the time Plaintiffs and the Class Members purchased their tickets confirm passengers'

contractual rights to refunds where a flight has been cancelled and/or significantly changed, regardless of the reason for a cancellation or delay.

106. Relevant portions of American's Conditions of Carriage (see Exhibit A) applicable at the time of Plaintiffs' ticket purchases include the following:

Rebooking your delayed/canceled flight

When your flight is canceled or a delay will cause you to miss your connection, we'll rebook you on the next flight with available seats. If you decide not to fly because your flight was delayed or canceled, we'll refund the remaining ticket value and any optional fees.

Refundable tickets

If you bought a refundable ticket, decide not to travel and want a refund, we'll pay:

- The full amount of the ticket if travel hasn't started
- The value of the unused travel if the ticket is partially used

We'll refund the original credit card within 7 days (allow 1-2 billing cycles for credit to show). We'll process cash and check refunds within 20 days of receiving all your paperwork.

Some requests may take longer, for example, tickets bought outside the U.S. in another currency or tickets that require research or verification. We are not liable for longer processing times.

Refunds FAQs »

Non-refundable tickets

We don't refund cash for non-refundable tickets. However, if you cancel your trip before departure, you can use the value of your ticket toward future travel on American. You'll need to rebook and travel within 1 year and pay a change fee plus any difference in fare.

We will refund a non-refundable ticket (or the value of the unused segment of your trip) to the original form of payment if:

- You cancel within 24 hours of booking (and booked at least 2 days before departure).
- We cancel your flight
- We make a schedule change that results in a change of 61 minutes or more.
- A passenger or their travel companion dies.*
- Military orders require you to cancel your trip.*
- *Supporting paperwork is required.

Events beyond our control (Force Majeure)

When there's an event we can't control like weather, a strike or other civil disorder, we may have to cancel, divert or delay flights. If your ticket still has value (if you were, for example, re-accommodated in a different class of service) we'll refund the unused portion to the original form of payment, but beyond that we are not liable.

Such "Force Majeure" events include:

- Meteorological or weather conditions
- Civil disturbances including war, embargoes or unsettled international conditions (real or threatened)
- Acts of terror
- Labor disputes that involve or affect our service
- Government regulations or requirements
- Shortage of labor, fuel or facilities of American or others
- Any fact not reasonably foreseen or predicted by American

International air transportation liability is regulated by the Montreal Convention and Warsaw Convention.

Montreal Convention and Warsaw Conventions »

- 107. The eligibility of Plaintiffs and the Class Members for such refunds applies not only to "refundable" tickets, but also "non-refundable" tickets.
- 108. Furthermore, American's Conditions of Carriage also incorporates Plaintiffs' and the Class Members' rights to refunds as required by the U.S. government: "If these Conditions of Carriage conflict with applicable laws, rules or security directives from U.S. or foreign government agencies, the applicable laws, rules or security directives will govern."
- 109. The terms of Defendant's offer to provide transportation services contained a definite promise by Defendant and gave Plaintiffs and the Class Members the power to agree to the terms of Defendant's offer to provide transportation services, including but not limited to, through the act of purchasing a ticket or accepting transportation on Defendant's aircraft.
- 110. Plaintiffs and the Class Members accepted Defendant's offer to provide transportation services, agreeing to the material terms contained in Defendant's offer.
- 111. Plaintiffs and the Class Members communicated their acceptance of Defendant's offer to Defendant by purchasing one or more tickets, booking transportation services with Defendant.
- 112. The agreement between Plaintiffs, the Class Members, and Defendant included an exchange of promises or value, i.e., consideration. Here, Plaintiffs and

the Class Members provided Defendant with consideration in the form of amounts equal to the monetary value of the fare and all charges and taxes paid.

- 113. Plaintiffs and the Class Members performed all obligations and conditions required and expected of them and/or had a valid excuse for not performing any such obligations due to the COVID-19 pandemic.
- 114. Moreover, the various national and state guidelines, laws, rules, and regulations related to the pandemic have frustrated Plaintiffs' and Class Members' ability to benefit from the Conditions of Carriage and ability to travel, thus making their domestic and/or foreign air travel impossible, or at a minimum, impracticable.
- 115. Defendant cancelled and/or significantly changed Plaintiffs' and the Class Members' flights.
- 116. Defendant has failed to provide and/or has outright refused to provide refunds to Plaintiffs and the Class Members for such cancelled and/or significantly changed flights.
- 117. Defendant did so even though Defendant was contractually obligated to provide refunds to Plaintiffs and the Class Members in such circumstances.
- 118. As a result, Defendant has failed to perform and/or has materially breached its contracts with Plaintiffs and the Class Members.

- 119. Because of Defendant's failure to perform under the contract, Plaintiffs and the Class Members have been damaged and/or did not receive the refunds, benefits, payment, and/or performance to which they were entitled.
- 120. As a result, Plaintiffs and the Class Members are entitled to fair compensation in the form of complete refunds for all fares, charges, and taxes paid.

COUNT II

VIOLATIONS OF STATE CONSUMER PROTECTION ACTS

- 121. Plaintiffs restate, re-allege, and incorporate herein by reference the preceding paragraphs as if fully set forth herein and further alleges as follows:
- 122. Count II is brought by Plaintiffs individually and on behalf of all similarly situated residents of each of the 50 states for violations of the state consumer protection acts including:¹³
 - a. the Alaska Unfair Trade Practices and Consumer Protection Act,
 Alaska Stat. § 45.50.471, et seq.;
 - b. the Arizona Consumer Fraud Act, Ariz. Rev. Stat. §§ 44-1521, et seq.;

¹³ Plaintiff Ward previously served notice on Defendant regarding claims under Alabama Code § 8-19-10(e); Alaska Statutes § 45.50.535; California Civil Code § 1782; Georgia Code § 10-1-399; Indiana Code § 24-5-0.5-5(a); Maine Revised Statutes, Title 5 § 50-634(g); Massachusetts General Laws Chapter 93A, § 9(3); Texas Business & Commercial Code § 17.505; West Virginia Code § 46A-6-106(b); and Wyoming Statutes § 40-12-109.

- c. the Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, et seq.;
- d. the California Unfair Competition Law, Bus. & Prof. Code §§ 17200, et seq. and 17500, et seq.;
- e. the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et seq.;
- f. the Colorado Consumer Protection Act, Colo. Rev. Stat. Ann. § 6-1-101, et seq.;
- g. the Connecticut Unfair Trade Practices Act, Conn. Gen Stat.

 Ann. § 42-110, et seq.;
- h. the Delaware Consumer Fraud Act, 6 Del. Code § 2513, et seq.;
- i. the D.C. Consumer Protection Procedures Act, D.C. Code § 28-3901, et seq.;
- j. the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, et seq.;
- k. the Hawaii Unfair Competition Law, Haw. Rev. Stat. § 480-2, et seq.;
- 1. the Idaho Consumer Protection Act, Idaho Code. Ann. § 48-601, et seq.;

- m. the Illinois Consumer Fraud and Deceptive Business Practices

 Act, § 815 ILCS 505/2, et seq.;
- n. the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-2, et seq.;
- o. the Iowa Consumer Fraud Act, Iowa Code § 714.16, et seq.;
- p. the Kansas Consumer Protection Act, Kan. Stat. Ann. § 50-623, et seq.;
- q. the Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, et seq.;
- r. the Louisiana Unfair Trade Practices and Consumer Protection
 Law, LSA-R.S. 51:1401, et seq.;
- s. the Maine Unfair Trade Practices Act, Me. Rev. Stat. Ann. Tit. 5, § 207, et seq.;
- t. the Maryland Consumer Protection Act, Md. Code Ann. Com. Law, § 13-301, et seq.;
- u. the Massachusetts Regulation of Business Practices for Consumers Protection Act, Mass. Gen Laws Ann. Ch. 93A, et seq.;
- v. the Michigan Consumer Protection Act, Mich. Comp. Laws Ann. § 445.901, et seq.;

- w. the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §325F, et seq.;
- x. the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407, et seq.;
- y. the Nebraska Consumer Protection Act, Neb. Rev. St. § 59-1601, et seq.;
- z. the Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. § 41.600, et seq.;
- aa. the New Hampshire Regulation of Business Practices for Consumer Protection, N.H. Rev. Stat. § 358-A:1, et seq.;
- bb. the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8, et seq.;
- cc. the New Mexico Unfair Practices Act, N.M. Stat. Ann. § 57-12-1, et seq.;
- dd. the New York Consumer Protection from Deceptive Acts and Practices, N.Y. Gen. Bus. Law § 349, et seq.;
- ee. the North Carolina Unfair and Deceptive Trade Practices Act,

 N.C. Gen Stat. § 75-1.1, et seq.;
- ff. the North Dakota Consumer Fraud Act, N.D. Cent. Code § 51-15, et seq.;

- gg. the Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.01, et seq.;
- hh. the Oklahoma Consumer Protection Act, Okla. Stat. tit. 15 § 751, et seq.;
- ii. the Oregon Unlawful Trade Practices Act, Or. Rev. Stat. § 646.605, et seq.;
- jj. the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, et seq.;
- kk. the Rhode Island Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-5.2(B), et seq.;
- the South Carolina Unfair Trade Practices Act, S.C. Code Ann.§§ 39-5-10, et seq.;
- mm. the South Dakota Deceptive Trade Practices and Consumer Protection, S.D. Codified Laws § 37-24-1, et seq.;
- nn. the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, et seq.;
- oo. the Texas Deceptive Trade Practices-Consumer Protection Act,
 Tex. Code Ann., Bus. & Con. § 17.41, et seq.;
- pp. the Utah Consumer Sales Practices Act, Utah Code. Ann. § 13-11-175, et seq.;

- qq. the Vermont Consumer Fraud Act, 9 V.S.A. § 2451, et seq.;
- rr. the Virginia Consumer Protection Act of 1977, Va. Code Ann. § 59.1-199, et seq.;
- ss. the Washington Consumer Protection Act, Wash. Rev. Code § 19.86.010, et seq.;
- tt. the West Virginia Consumer Credit And Protection Act, W. Va. Code § 46A, et seq.;
- uu. the Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18, et seq.; and
- vv. the Wyoming Consumer Protection Act, Wyo. Stat. Ann. § 40-12-101, et seq.
- 123. Defendant's refusals to provide refunds for cancelled and/or significantly delayed flights—occurring in the course of conduct involving trade or commerce—constitute unfair methods of competition and unfair or deceptive acts or practices within the meaning of each of the above-enumerated statutes.
- 124. Defendant's acts and practices regarding refunds for cancelled and/or significantly delayed flights were unfair and created a likelihood of confusion or misunderstanding and misled, deceived, or damaged Plaintiffs and Class Members in connection with the sale and refunds of airline tickets. Defendant's conduct also constituted the use or employment of deception, fraud, false pretense, false promise,

misrepresentation, or the knowing concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services, whether or not a person has in fact been misled, deceived, or damaged in violation of each of the above-enumerated statutes.

125. Plaintiffs, on behalf of themselves and the Class Members, seek refunds, monetary damages, treble damages, and such other and further relief as set forth in each of the above-enumerated statutes.

COUNT III

UNJUST ENRICHMENT

- 126. Plaintiffs restate, re-allege, and incorporate herein by reference the preceding paragraphs as if fully set forth herein. Plaintiffs allege this Count in the alternative to the extent an express contract controls the terms of the parties' agreement.
- 127. At all times relevant hereto, Defendant sold Plaintiffs and the Class Members airline tickets for travel to, from, and within the United States.
- 128. American has benefitted from its unlawful acts by receiving payments for the sale of tickets on cancelled flights, though American has no right to deny Plaintiffs and the Class Members refunds for tickets purchased on cancelled flights.

- 129. Plaintiffs and members of the Class conferred upon Defendant a benefit in the form of money for tickets on specific flights. In paying for such flights, Plaintiffs and the Class Members conferred benefits that were non-gratuitous.
- 130. Defendant appreciated or knew of the non-gratuitous benefits conferred upon it by Plaintiffs and members of the Class.
- 131. Defendant accepted or retained the non-gratuitous benefits conferred by Plaintiffs and members of the Class, with full knowledge and awareness that, because of Defendant's unconscionable wrongdoing, Plaintiffs and members of the Class are entitled to refunds for cancelled flights.
- 132. Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiffs and the Class Members under these circumstances made Defendant's retention of the non-gratuitous benefits unjust and inequitable.
- 133. Because Defendant's retention of the non-gratuitous benefits conferred by Plaintiffs and members of the Class is unjust and inequitable, Plaintiffs and the Class Members are entitled to, and seek disgorgement and restitution, of Defendant's wrongful profits, ticket revenue on American cancelled flights, and benefits in a manner established by the Court.

COUNT IV

CONVERSION

- 134. Plaintiffs restate, re-allege, and incorporate herein by reference the preceding paragraphs as if fully set forth herein.
- 135. Plaintiffs and the other members of the Class have an undisputed right to immediate refunds in lieu of rebookings and/or travel vouchers for their purchase of tickets on flights cancelled and/or significantly delayed by American.
- 136. American wrongfully exercised control over and/or intentionally interfered with the rights of Plaintiffs and members of the Class by limiting passengers on cancelled flights to either a rebooked flight or a travel voucher. All the while, Defendant has unlawfully retained the monies Plaintiffs and the Class Members paid for tickets on cancelled and/or significantly delayed flights.
- 137. American deprived Plaintiffs and the other members of the Class of the value they paid for tickets on cancelled flights as well as their right to a refund.
- 138. Plaintiffs and members of the Class have requested and/or demanded that American issue refunds for cancelled flights.
- 139. This interference with the rights and services for which Plaintiffs and members of the Class paid damaged Plaintiffs and Class Members, in that they purchased tickets and, as such, American has deprived Plaintiffs and Class Members

of the right to their property, in this case, the amounts paid for tickets on cancelled flights.

140. Plaintiffs and members of the Class may exercise their right to full refunds of all amounts paid for tickets on cancelled flights.

COUNT IV

FRAUDULENT MISREPRESENTATION

- 141. Plaintiffs restate, re-allege, and incorporate herein by reference the preceding paragraphs as if fully set forth herein.
- 142. Defendant intentionally misrepresented to Plaintiffs and the Class Members regarding their rights to a refund on American cancelled flights, including as reflected in American's refund policies.
- 143. Defendant intentionally and actively misrepresented to Plaintiffs and Class Members that passengers on cancelled flights are limited to rebookings or travel vouchers.
- 144. Defendant's representations were false. At all times relevant, Plaintiffs and members of the Class are entitled to refunds on cancelled and/or significantly delayed flights, not just rebookings or travel vouchers.
 - 145. Defendant's misrepresentations were made fraudulently.

- 146. Defendant made its representations with knowledge that Plaintiffs and Class Members were entitled to refunds on all cancelled and/or significantly delayed flights.
- 147. Instead, when American made the representation regarding the rights to refunds and/or post-American flight cancellation options, American intended that Plaintiffs and the Class Members would rely on it.
 - 148. Plaintiffs and the Class Members relied on Defendant's representations.
- 149. The reliance by Plaintiffs and the Class Members on Defendant's representations was reasonable.
- 150. Defendant's representations proximately caused damage to Plaintiffs and the Class Members. By misrepresenting that passengers on American cancelled and/or significantly delayed flights are limited to rebookings or travel vouchers, Defendant financially damaged Plaintiffs and members of the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class Members request that the Court enter an order or judgment against Defendant including:

A. Certification of the action as a class action under Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, appointment of Plaintiffs as Class Representatives, and appointment of their counsel as Class Counsel;

- B. Damages and refunds in the amount of unrefunded monies paid for American Airlines tickets;
- C. Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited;
 - D. Pre-judgment and post-judgment interest on such monetary relief;
- E. Other appropriate injunctive relief as permitted by law or equity, including an order enjoining Defendant from retaining refunds for cancelled flights;
 - F. The costs of bringing this suit, including reasonable attorney's fees; and
- G. All other relief to which Plaintiffs and members of the Class may be entitled by law or in equity.

JURY DEMAND

Plaintiffs demand trial by jury on their own behalf and on behalf of the Class Members.

DATED this 15th day of July, 2020.

Respectfully submitted,

VAUGHT FIRM, LLC

/s/ Allen R. Vaught

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on July 15, 2020, a true and correct copy of the foregoing was filed electronically via CM/ECF, which caused notice to be sent to all counsel of record.

/s/ Allen R. Vaught
Allen R. Vaught

EXHIBIT 2

Month

Day

Secure booking - only takes a few minutes!

Texas may have travel restrictions in place due to COVID-19. Find out more	×
Sign in to earn 49 Expedia Rewards points *	One way flight 2 tickets: 2 adults
Who's traveling? Traveler names must match government-issued photo ID exactly.	Washington (DCA) to Dallas (DFW)
Traveler 1: Adult, primary contact	Fri, Oct 2 8:30am - 6:00pm (10h 30m)
First name	4h 53m stop in BOS
Middle name	
	No Change Fees
Last name	 American Airlines is waiving change fees for your flights. See policy
Country/Territory Code	
United States of America +1	Your price summary
	Traveler 1: Adult ➤ \$123.20
Phone number	Traveler 2: Adult ❖ \$123.20
In case we need to reach you	Total: \$246.40
Receive text alerts about this trip. Message and data rates may apply.	All prices quoted in US Dollar .
Gender Male Female	
Date of birth	

Year

Traveler 2: Adult
First name
Middle name
Last name
Gender Male Female
Date of birth
Month Day Year
Frequent flyer, TSA PreCheck, redress and more >
Seat selection
Choose seats
Get money back on future price drops ❖

Earn 25,000 Expedia Rewards bonus points after qualifying purchases with the Expedia Rewards Voyager Card from Citi. Learn more and apply

□

△ How would you like to pay?

Debit/Credit Card Click-to-Pay

9/18/2020

Expedia: Payment

Case 4:20-cv-00371-O Document 61 Filed 10/19/20 Page 63 of 117 PageID 1605 Name on Card Debit/Credit card number **Expiration date** Month Year Security code **Country/Territory** United States of America Billing address 1 (ex. 123 Main) Billing address 2 (ex. Suite 400, Apt. 4B) Where should we send your confirmation? Please enter the email address where you would like to receive your confirmation. **Email address**

Create an account for faster checkout and easy itinerary access.

Enter a password to create an account using the email address above.

Create password

Review and book your trip

- ✓ Free cancellation within 24 hours of booking!
- 1. Review your trip details to make sure the dates and times are correct.
- 2. Check your spelling. Flight passenger names must match government-issued photo ID exactly.
- 3. Review the terms of your booking:
 - We understand that sometimes plans change. We do not charge a cancel or change fee. When the airline charges such fees in accordance with its own policies, the cost will be passed on to you.
 - Please read the complete penalty rules for changes and cancellations or charter contract ☐.
 - Please read important information regarding airline liability

By selecting to complete this booking I acknowledge that I have read and accept the above Rules & Restrictions, Terms of Use und Privacy Policy and Government Travel Advice ...

Complete Booking >



We use secure transmission and encrypted storage to protect your personal information.

This payment will be processed in the U.S. This does not apply when the travel provider (airline/hotel/rail, etc.) processes your payment.



Unlock trip savings up to 20% off hotels and 40% off cars when you book this flight

Your discount lasts until your trip starts

EXHIBIT 3

Secure booking - only takes a few minutes!

Sign in to book faster *	One way flight 1 ticket: 1 adult
Who's traveling? Traveler names must match government-issued photo ID exactly. First name	Washington (DCA) to Dallas (DFW) Fri, Oct 2
	12:30pm - 6:00pm (6h 30m) 0h 41m stop in BOS
Attalla casas	↑ American Airlines 2170
Middle name	▲ American Airlines 1094
	No change fees
Last name	No Change Fees
	American Airlines is waiving change fees for your flights.
Country/Territory Code	See policy P
United States of America +1	Value prince allegate and
Phone number	Your price summary Traveler 1: Adult \$ \$82.60
In case we need to reach you	Total: \$82.60
Receive text alerts about this trip. Message and data rates may apply.	All prices quoted in US Dollar .
Gender	
○ Male ○ Female	✓ Price Guarantee
Date of birth	Congratulations!
	You're getting the lowest possible rate. <u>We</u>
Month Day Year	guarantee it. 🗗
Seat selection	
Choose seats	

Frequent flyer, TSA PreCheck, redress and more *

■ How would you like to pay? Name on Card Debit/Credit card number **Expiration date** Month Year Security code **Country/Territory** United States of America Billing address 1 (ex. 123 Main) Billing address 2 (ex. Suite 400, Apt. 4B)

Where should we send your confirmation?

Please enter the email address where you would like to receive your confirmation.

Email address		
(Check the box if you do not want to receive emails from Hotwire with	
	travel deals, special offers, and other information.	

Review and book your trip

- 1. Review your trip details to make sure the dates and times are correct.
- 2. Check your spelling. Flight passenger names must match government-issued photo ID exactly.
- 3. Review the terms of your booking:
 - vve understand that sometimes plans change, vve do not charge a cancel or change fee. When the airline charges such fees in accordance with its own policies, the cost will be passed on to you.
 - Please read the complete penalty rules for changes and cancellations or charter contract .
 - Please read important information regarding airline liability limitations

By selecting to complete this booking I acknowledge that I have read and accept the above Rules & Restrictions, Terms of Use and Privacy Policy and Government Travel Advice .

Complete Booking >

✓ Free cancellation within 24 hours of booking!

Unlock trip savings up to 30% off select hotels when you book this flight

Your discount lasts until your trip starts



This payment will be processed in the U.S. This does not apply when the travel provider (airline/hotel/rail, etc.) processes your payment.

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EXHIBIT 4



Hotels Flights Bundle and Save

Website Terms of Use

Last Revised on February 21, 2018

AGREEMENT BETWEEN CUSTOMER AND EXPEDIA, INC.

Welcome to the Expedia.com website (the "Website"). This Website is provided solely to assist customers in gathering travel information, determining the availability of travel—related goods and services, making legitimate reservations or otherwise transacting business with travel suppliers, and for no other purposes. The terms "we", "us", "our", "Expedia" and "Expedia, Inc." refer to Expedia, Inc., a Washington corporation, and its subsidiaries and corporate affiliates, including Travelscape, LLC, (collectively, the "Expedia Companies"). "Expedia Partner" means any co-branded and/or linked website through which we provide links, content or service. The term "you" refers to the customer visiting the Website and/or booking a reservation through us on this Website, or through our customer service agents.

This Website is offered to you conditioned upon your acceptance without modification of all the terms, conditions, and notices set forth below (collectively, the "Terms of Use" or "Agreement"). Please read these Terms of Use carefully, as they contain important information about limitations of liability and resolution of disputes through arbitration rather than in court. You should also read our Privacy Policy, which also governs your use of the Website, and is incorporated by reference in this Agreement. By accessing or using this Website, booking any reservations for travel products or services on this Website, or contacting our call center agents, you agree that the Terms of Use then in force shall apply. If you do not agree to the Terms of Use, please do not use or book any reservations through this Website or our call center agents.

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USE OF THE WEBSITE

As a condition of your use of this Website, you warrant that:

- 1. you are at least 18 years of age;
- 2. you possess the legal authority to create a binding legal obligation;
- 3. you will use this Website in accordance with these Terms of Use;
- 4. you will only use this Website to make legitimate reservations for you or for another person for whom you are legally authorized to act;
- 5. you will inform such other persons about the Terms of Use that apply to the reservations you have made on their behalf, including all rules and restrictions applicable thereto;
- 6. all information supplied by you on this Website is true, accurate, current and complete; and
- 7. if you have an Expedia.com account, you will safeguard your account information and will supervise and be completely responsible for any use of your account by you and anyone other than you.

We retain the right at our sole discretion to deny access to anyone to this Website and the services we offer, at any time and for any reason, including, but not limited to, for violation of these Terms of Use.

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DISPUTES

Expedia is committed to customer satisfaction, so if you have a problem or dispute, we will try to resolve your concerns. But if we are unsuccessful, you may pursue claims as explained in this section.

You agree to give us an opportunity to resolve any disputes or claims relating in any way to the Website, any dealings with our customer service agents, any services or products provided, any representations made by us, or our Privacy Policy ("Claims") by contacting Expedia Customer Support or 1-877-787-7186. If we are not able to resolve your Claims within 60 days, you may seek relief through arbitration or in small claims court, as set forth below.

Any and all Claims will be resolved by binding arbitration, rather than in court, except you may assert Claims on an individual basis in small claims court if they

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qualify. This includes any Claims you assert against us, our subsidiaries, travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement). This also includes any Claims that arose before you accepted these Terms of Use, regardless of whether prior versions of the Terms of Use required arbitration.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including statutory damages, attorneys' fees and costs), and must follow and enforce these Terms of Use as a court would.

Arbitrations will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA Consumer Rules. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, except as provided in this section. If your total Claims seek less than \$10,000, we will reimburse you for filing fees you pay to the AAA and will pay arbitrator's fees. You may choose to have an arbitration conducted by telephone, based on written submissions, or in person in the state where you live or at another mutually agreed location.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your Claims to "Expedia Legal: Arbitration Claim Manager," at Expedia, Inc., 333 108th Ave N.E. Bellevue, WA 98004. If we request arbitration against you, we will give you notice at the email address or street address you have provided. The AAA's rules and filing instructions are available at www.adr.org or by calling 1-800-778-7879.

Any and all proceedings to resolve Claims will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a Claim proceeds in court rather than in arbitration we each waive any right to a jury trial. The Federal Arbitration Act and federal arbitration law apply to this agreement. An arbitration decision may be confirmed by any court with competent jurisdiction.

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PROHIBITED ACTIVITIES

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The content and information on this Website (including, but not limited to, price and availability of travel services) as well as the infrastructure used to provide such content and information, is proprietary to us or our suppliers and providers. While you may make limited copies of your travel itinerary (and related documents) for travel or service reservations booked through this Website, you agree not to otherwise modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell or resell any information, software, products, or services obtained from or through this Website. Additionally, you agree not to:

- 1. use this Website or its contents for any commercial purpose;
- 2. make any speculative, false, or fraudulent reservation or any reservation in anticipation of demand;
- 3. access, monitor or copy any content or information of this Website using any robot, spider, scraper or other automated means or any manual process for any purpose without our express written permission;
- 4. violate the restrictions in any robot exclusion headers on this Website or bypass or circumvent other measures employed to prevent or limit access to this Website;
- 5. take any action that imposes, or may impose, in our discretion, an unreasonable or disproportionately large load on our infrastructure;
- 6. deep—link to any portion of this Website (including, without limitation, the purchase path for any travel services) for any purpose without our express written permission; or
- 7. "frame", "mirror" or otherwise incorporate any part of this Website into any other website without our prior written authorization.

If your booking or account shows signs of fraud, abuse or suspicious activity, Expedia may cancel any travel or service reservations associated with your name, email address or account, and close any associated Expedia accounts. If you have conducted any fraudulent activity, Expedia reserves the right to take any necessary legal action and you may be liable for monetary losses to Expedia, including litigation costs and damages. To contest the cancellation of a booking or freezing or closure of an account, please contact Expedia Customer Service.

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PRIVACY POLICY

Expedia Inc. believes in protecting your privacy. Please click here to review our current Privacy Policy, which also governs your use of the Website and, as stated above, is incorporated by reference, to understand our practices: Privacy Policy.

SUPPLIER RULES AND RESTRICTIONS

Additional terms and conditions will apply to your reservation and purchase of travel—related goods and services that you select. Please read these additional terms and conditions carefully. In particular, if you have purchased an airfare, please ensure you read the full terms and conditions of carriage issued by the travel supplier, which can be found on the supplier's website. You agree to abide by the terms and conditions of purchase imposed by any supplier with whom you elect to deal, including, but not limited to, payment of all amounts when due and compliance with the supplier's rules and restrictions regarding availability and use of fares, products, or services. Airfare is only guaranteed once the purchase has been completed and the tickets have been issued. Airlines and other travel suppliers may change their prices without notice. We reserve the right to cancel your booking if full payment is not received in a timely fashion.

Expedia may offer you the opportunity to book a reservation for a combination of two one—way tickets instead of a roundtrip ticket. Combined one-way tickets may provide a greater choice of flights, are often cheaper and can be combined on the same airline or on different airlines. Unlike roundtrip tickets, each one-way ticket is subject to its own rules, restrictions, and fees. If one of these flights is affected by an airline change (e.g. cancellation or rescheduling) that causes a Customer to make changes to the other flight, the Customer will be responsible for any fees incurred for making changes to the unaffected flight.

For certain low-cost carriers, the price of your flight has been converted from a different currency for convenience purposes to provide you an estimate of the amount of the purchase in your local currency. As a result, when you book, the amount charged to your credit card by the airline may be slightly different due to currency fluctuations. Your statement may also include a fee from your card issuer to process the transaction plus any applicable taxes for international purchases.

Federal law forbids the carriage of hazardous materials aboard aircraft in your

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luggage or on your person. A violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124). Hazardous materials include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials. Examples: Paints, lighter fluid, fireworks, tear gases, oxygen bottles, and radio-pharmaceuticals. There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your luggage and certain smoking materials carried on your person.

You acknowledge that some third-party providers offering certain services and/or activities may require you to sign their liability waiver prior to participating in the service and/or activity they offer. You understand that any violation of any such supplier's rules and restrictions may result in cancellation of your reservation(s), in your being denied access to the applicable travel product or services, in your forfeiting any monies paid for such reservation(s), and/or in our debiting your account for any costs we incur as a result of such violation.

Expedia is not liable for any costs incurred due to hotel relocation.

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Sort Order:

Travelers have many options on to help them find the perfect hotel, flight, car rental, cruise or activity. The "sort" settings at the top of the page allows travelers to order search results to their preference, whether based on price, verified review score, or other criteria. The "filter" settings also allow travelers to include or exclude various options to suit their travel needs. If no options are selected, we will show a range of relevant options in the search results, based on the criteria outlined below:

• Lodging: Our default sort order reflects the relevance of properties to your search criteria, as we want to make sure you are able to quickly and easily find the offer that is right for you. We measure relevance by taking into account factors like a property's location, its review scores, the popularity of the property (measured by how many travelers on our sites make bookings at that property), the quality of the content provided by the property, and the competitiveness of the property's rates and availability, all relative to other properties meeting your chosen search criteria. The compensation which a

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property pays us for bookings made through our sites is also a factor for the relative ranking of properties with similar offers, based on the relevance factors described above. On our non-default sorts (e.g., by price or by star rating), properties with similar results will be ordered based on the factors above.

- Flights: Our default sort order is based on lowest price. In cases where two flights have the same price, the shorter flight is listed first.
- Car Rental: Our default sort order is primarily driven by price, but we may consider other relevant factors such as popularity, customer reviews, convenience of pickup location, and car type or category.
- Cruise: Our default sort order is based on a number of relevant factors such as cruise line rating, ship rating, price per day, origin rating, destination rating, length of cruise, and booking window.
- Activities: Our default sort order is manually curated by Expedia's destination managers familiar with each market, taking into account such factors as price, popularity, distance from hotel options, and traveler feedback.
- Vacation Packages: When combining several different travel products into a vacation package, we use the criteria outlined above to determine the sort order for each product.

Additionally, we continually optimize our service to provide the best experience to travelers. Accordingly, we may test different default sort order algorithms from time to time.

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PREPAID HOTEL RESERVATIONS

You acknowledge that the Expedia Companies pre-negotiate certain room rates with hotel suppliers to facilitate the booking of reservations. You also acknowledge that the Expedia Companies provide you services to facilitate such booking of reservations for a consideration (the "facilitation fee"). The room rate displayed on the Website is a combination of the pre-negotiated room rate for rooms reserved on your behalf by the Expedia Companies and the facilitation fee retained by the Expedia Companies for their services. You authorize the Expedia Companies to book reservations for the total reservation price, which includes the room rate displayed on the Website, plus tax recovery charges, service fees, and where applicable, taxes on the Expedia Companies' services. You agree that

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your credit card will be charged by the Expedia Companies for the total reservation price. Upon submitting your reservation request you authorize the Expedia Companies, including Travelscape, LLC, to facilitate hotel reservations on your behalf, including making payment arrangements with hotel suppliers.

You acknowledge that except as provided below with respect to tax obligations on the amounts we retain for our services, the Expedia Companies do not collect taxes for remittance to applicable taxing authorities. The tax recovery charges on prepaid hotel transactions are a recovery of the estimated taxes (e.g. sales and use, occupancy, room tax, excise tax, value added tax, etc.) that the Expedia Companies pay to the hotel supplier for taxes due on the hotel's rental rate for the room. The hotel suppliers invoice the Expedia Companies for certain charges, including tax amounts. The hotel suppliers are responsible for remitting applicable taxes to the applicable taxing jurisdictions. None of the Expedia Companies act as co-vendors with the supplier with whom we book or reserve our customer's travel arrangements. Taxability and the appropriate tax rate vary greatly by location. The actual tax amounts paid by the Expedia Companies to the hotel suppliers may vary from the tax recovery charge amounts, depending upon the rates, taxability, etc. in effect at the time of the actual use of the hotel by our customers. We retain service fees as additional compensation in servicing your travel reservation. Service fees retained by the Expedia Companies for their services vary based on the amount and type of hotel reservation.

You may cancel or change your prepaid hotel reservation, but you will be charged the cancellation or change fee indicated in the rules and restrictions for the hotel reservation. If you do not cancel or change your reservation before the cancellation policy period applicable to the hotel you reserved, which varies by hotel (usually 24 to 72 hours) prior to your date of arrival, you will be subject to a charge equal to applicable nightly rates, tax recovery charges and service fees. In the event you do not show for the first night of the reservation and plan to checkin for subsequent nights in your reservation, you must confirm the reservation changes with us no later than the date of the first night of the reservation to prevent cancellation of your reservation.

You agree to pay any cancellation or change fees that you incur. In limited cases, some hotels do not permit changes to or cancellations of reservations after they are made, as indicated in the rules and restrictions for the hotel reservation. You agree to abide by the Terms of Use imposed with respect to your prepaid hotel

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reservations.

Sales, use and/or local hotel occupancy taxes are imposed on the amounts that we charge for our services (service fee and/or facilitation fee) in certain jurisdictions. The actual tax amounts on our services may vary depending on the rates in effect at the time of your hotel stay.

You may not book reservations for more than 8 rooms online for the same hotel/stay dates. If we determine that you have booked reservations for more than 8 rooms in total in separate reservations, we may cancel your reservations, and charge you a cancellation fee, if applicable. If you paid a non-refundable deposit, your deposit will be forfeited. If you wish to book reservations for 9 or more rooms, you must contact Expedia's group travel specialists by phone at (800) 916-3290 or by filling out the group travel form online. One of our group travel specialists will research your request and contact you to complete your reservation. You may be asked to sign a written contract and/or pay a nonrefundable deposit.

Some hotel suppliers may require you to present a credit card or cash deposit upon check-in to cover additional expenses incurred during your stay. Such deposit is unrelated to any payment received by Expedia, Inc. for your hotel booking.

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PAY NOW OR PAY LATER DETAILS

With certain hotels, you may be presented with the option to pay online now or pay later at the hotel. If you select the "Pay Online Now" option, Expedia will charge the amount to your credit card in US dollars immediately. If you select "Pay Later at the Hotel", the hotel will charge your credit card in the local currency at the time of your stay. Please note that taxes and fees vary between the two payment options. Tax rates and foreign exchange rates could change in the time between booking and stay. Expedia coupons may only be applied to "Pay Online Now" bookings.

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EXPEDIA UNPUBLISHED RATE RESERVATIONS

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When available, Expedia, Inc.'s subsidiary, Hotwire, Inc., may offer additional, discounted hotel booking options on the Website. These hotels, called Expedia Unpublished Rate hotels, are different from other hotels offered on the Website in several important ways. The name and exact address of the hotel are not shown until after payment has been made for the booking. All bookings are final and cannot be changed, refunded, exchanged, cancelled, or transferred to another party. Your credit card will be charged for the amount shown even if you do not use the booking. Room type will be determined by the hotel based on the number of guests provided at time of booking. All reservations are booked for stays in non-smoking rooms (subject to availability). Hotel room assignments are determined at check-in and upgrades are not available. The maximum number of Expedia Unpublished Rate rooms that can be booked at one time is six. All Expedia Unpublished Rate rooms will be booked under the same name, and the guest under whose name the reservation is made must be present at check-in. Expedia Unpublished Rate hotels are not eligible for hotel reward or club programs. Upon check-in, guests must present a valid ID and credit card in their name (the amount of available credit required will vary by hotel). Debit cards may not be accepted. For information about tax recovery charges, service fees, and taxes on our services, where applicable, please see "Prepaid Hotel Reservations."

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BANK AND CREDIT CARD FEES

Your payment is processed in the United States, when we process your payment. When the travel supplier processes your payment, it will be processed in the country in which the travel supplier is based.

Expedia or the travel supplier may have to verify: (i) the validity of the payment card (through a charge of a nominal value that is either refunded within a few days or deducted from the final payment due to the travel supplier) and, (ii) the availability of funds on the payment card (to be confirmed by the bank issuing the your credit card).

Some banks and credit card companies impose fees for international or cross border transactions. For instance, if you are making a booking using a US-issued card with a non-US merchant, your bank may charge you a cross border or international transaction fee. Furthermore, booking international travel may be

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considered an international transaction by your bank or card company, since we may pass your card details to an international travel supplier to be charged. In addition, some banks and card companies impose fees for currency conversion. For instance, if you are making a booking in a currency other than the currency of your credit card, your credit card company may convert the booking amount to the currency of your credit card and charge you a conversion fee. The currency exchange rate and foreign transaction fee is determined solely by your bank on the day that they process the transaction. If you have any questions about these fees or the exchange rate applied to your booking, please contact your bank.

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CURRENCY CONVERTER

If a currency convertor is available on the Website, the following terms and conditions apply: Currency rates are based on various publicly available sources and should be used as guidelines only. Rates are not verified as accurate, and actual rates may vary. Currency quotes are not updated every day. Check the date on the currency converter feature for the day that currency was last updated. The information supplied by this application is believed to be accurate, but the Expedia Companies, the Expedia Partners, and/or our respective suppliers do not warrant or guarantee such accuracy. When using this information for any financial purpose, we advise you to consult a qualified professional to verify the accuracy of the currency rates. We do not authorize the use of this information for any purpose other than your personal use and you are expressly prohibited from the resale, redistribution, and use of this information for commercial purposes.

EXPEDIA REWARDS

The Expedia Rewards program ("Program") is offered to the Website's customers at the sole discretion of Expedia, Inc., and is open only to individuals who have reached the legal age of majority in their respective province/territory of residence, have a valid email address, and have enrolled in the Program. Please click here to see the Terms and Conditions of the Program.

PAY WITH POINTS

Expedia allows points from selected loyalty programs ("Points Programs") to be redeemed for certain travel-related goods and services on the Website. If you use or register to use any points on the Website these terms and conditions apply. To be eligible to use points on the Website, you must have an Expedia.com account,

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you must have an eligible account with the provider of the Points Program that is active and in good standing, and your purchase must exceed minimum transaction value for the use of your points (if any).

LINKING YOUR ACCOUNT: For Points Programs other than Expedia Rewards (Your Expedia Rewards account is automatically linked to your Expedia.com account), your Points Program account ("Account") will be linked to your Expedia.com account during the registration process on the Website. Expedia reserves the right, in its sole discretion, to deny registration, de-link your Account, or terminate your ability to use points on Expedia.com for any reason. During and after registration, the Points Program provider may provide Expedia with information about your Account, including your points balance.

REDEEMING POINTS: There is no fee to redeem your points at Expedia.com. Points may only be redeemed for eligible purchases of Expedia travel-related goods and services that Expedia will determine in its discretion. Your Points Program provider will deduct from your Account balance the amount of points you elect to use toward your eligible purchase. You may not combine points from one Points Program provider with any other loyalty points from another provider to complete a single transaction. However, if you do not have enough points to complete an eligible purchase, you may use an eligible credit card associated with your Account to complete the transaction. Eligible cards for such transactions may be limited to cards associated with the Points Program used in the transaction. Expedia may, in its discretion, allow you to combine points with eligible coupons.

ADDITIONAL TERMS: Purchases made with points are subject to the point to dollar conversion rate set by the Points Program provider. The Points Program provider has the right to change the point to dollar conversion rates at any time. Also, some Points Program providers may set a minimum amount of points that may be redeemed in any transaction. Additional terms and conditions may apply and are available at the applicable Points Program provider's website.

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INTERNATIONAL TRAVEL

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You are responsible for ensuring that you meet foreign entry requirements and that your travel documents, such as passports and visas (transit, business, tourist, and otherwise), are in order and any other foreign entry requirements are met. Expedia has no special knowledge regarding foreign entry requirements or travel documents. We urge customers to review travel prohibitions, warnings, announcements, and advisories issued by the relevant governments prior to booking travel to international destinations.

Passport and Visa: You must consult the relevant Embassy or Consulate for this information. Requirements may change and you should check for up-to-date information before booking and departure. We accept no liability if you are refused entry onto a flight or into any country due to your failure to carry the correct and adequate passport, visa, or other travel documents required by any airline, authority, or country, including countries you may just be transiting through. This includes all stops made by the aircraft, even if you do not leave the aircraft or airport.

Health: Recommended inoculations for travel may change and you should consult your doctor for current recommendations before you depart. It is your responsibility to ensure that you meet all health entry requirements, obtain the recommended inoculations, take all recommended medication, and follow all medical advice in relation to your trip.

Disinsection: Although not common, most countries reserve the right to disinsect aircraft if there is a perceived threat to public health, agriculture or environment. The World Health Organization and the International Civil Aviation Organization have approved the following disinsection procedures: (1) spray the aircraft cabin with an aerosolized insecticide while passengers are on board or (2) treat the aircraft's interior surfaces with a residual insecticide while passengers are not on board. For more information,

see: https://www.transportation.gov/airconsumer/spray

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particular response, title and non-infringement.

The carriers, hotels and other suppliers providing travel or other services on this Website are independent contractors and not agents or employees of the Expedia Companies or the Expedia Partners. The Expedia Companies and the Expedia Partners are not liable for the acts, errors, omissions, representations, warranties, breaches or negligence of any such suppliers or for any personal injuries, death, property damage, or other damages or expenses resulting there from. The Expedia Companies and the Expedia Partners have no liability and will make no refund in the event of any delay, cancellation, overbooking, strike, force majeure or other causes beyond their direct control, and they have no responsibility for any additional expenses, omissions, delays, re-routing or acts of any government or authority.

In no event shall the Expedia Companies, the Expedia Partners and/or their respective suppliers be liable for any direct, indirect, punitive, incidental, special or consequential damages arising out of, or in any way connected with, your access to, display of or use of this Website or with the delay or inability to access, display or use this Website (including, but not limited to, your reliance upon opinions appearing on this Website; any computer viruses, information, software, linked sites, products and services obtaining through this Website; or otherwise arising out of the access to, display of or use of this Website) whether based on a theory of negligence, contract, tort, strict liability, consumer protection statutes, or otherwise, and even if the Expedia Companies, the Expedia Partners and/or their respective suppliers have been advised of the possibility of such damages.

If, despite the limitation above, the Expedia Companies, the Expedia Partners or their respective suppliers are found liable for any loss or damage which arises out of or in any way connected with any of the occurrences described above, then the liability of the Expedia Companies, the Expedia Partners and/or their respective suppliers will in no event exceed, in the a' gregat% the greater of (a) the service fees you paid to Expedia, Inc. in connection with such transaction(s) on this Website, or (b) One-Hundred Dollars (US\$100.00) or the equivalent in local currency.

The limitation of liability reflects the allocation of risk between the parties. The limitations specified in this section will survive and apply even if any limited remedy specified in these Terms of Use is found to have failed of its essential

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purpose. The limitations of liability provided in these Terms of Use inure to the benefit of the Expedia Companies, the Expedia Partners, and/or their respective suppliers.

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INDEMNIFICATION

You agree to defend and indemnify the Expedia Companies, the Expedia Partners, and/or their respective suppliers and any of their officers, directors, employees and agents from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties or other costs or expenses of any kind or nature including but not limited to reasonable legal and accounting fees, brought by third parties as a result of:

- 1. your breach of these Terms of Use or the documents referenced herein;
- 2. your violation of any law or the rights of a third party; or
- 3. your use of this Website.

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LINKS TO THIRD-PARTY SITES

This Website may contain hyperlinks to websites operated by parties other than Expedia, Inc. Such hyperlinks are provided for your reference only. We do not control such websites and are not responsible for their contents or the privacy or other practices of such websites. Further, it is up to you to take precautions to ensure that whatever links you select or software you download (whether from this Website or other websites) is free of such items as viruses, worms, trojan horses, defects and other items of a destructive nature. Our inclusion of hyperlinks to such websites does not imply any endorsement of the material on such websites or any association with their operators.

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REVIEWS, COMMENTS, PHOTOS AND OTHER SUBMISSIONS

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From time to time we may offer customers incentives to leave hotel reviews (e.g. discount coupon/entry into prize draws etc.)As it is important to us that hotel reviews are impartial and honest, these incentives will be available to customers regardless of whether the hotel review is positive or negative.

All photos submitted are subject to our Photo Submission Guidelines, available below:

https://www.expedia.com/p/info-other/community-guidelines.htm

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In accordance with the Digital Millennium Copyright Act ("DMCA") and other applicable law, Expedia has adopted a policy of terminating, in appropriate circumstances and at Expedia's sole discretion, subscribers or account holders who are deemed to be repeat infringers. Expedia may also at its sole discretion limit access to the Website and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement. If you believe that an account holder or subscriber is a repeat infringer, please provide information sufficient for us to verify that the account holder or subscriber is a repeat infringer when filing your notice.

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NOTICE OF INFRINGING MATERIAL

If you believe in good faith that materials hosted by us infringe your copyright, you (or your agent) may send us a written notice that includes the following information. Please note that we will not process your complaint if it is not properly filled out or is incomplete. Any misrepresentations in your notice regarding whether content or activity is infringing may expose you to liability for damages.

- 1. A clear identification of the copyrighted work you claim was infringed.
- 2. A clear identification of the material you claim is infringing on the Website, such as a link to the infringing material.
- 3. Your address, email address and telephone number.

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- 4. A statement that you have a "good faith belief that the material that is claimed as copyright infringement is not authorized by the copyright owner, its agent, or the law."
- 5. A statement that "the information in the notification is accurate, and under penalty of perjury, the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."
- 6. A signature by the person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You may send us your notice by email to exp-copyright@expedia.com, by fax to (425) 679-7251, Attn: IP/Trademark Legal Dept., DMCA Complaints, or by using the contact information below.

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COUNTER NOTICES

If material you have posted has been taken down, you may file a counternotification by fax or regular mail that sets forth the items specified below. You may want to seek legal counsel prior to doing so. Please include the following details:

- 1. Identification of the specific content that was removed or disabled and the location that content appeared on Expedia's Website. Please provide the URL address if possible.
- 2. □ou2name, mailing addre3s, telephone number and email address.
- 3. A statement that you consent to the jurisdiction of Federal District Court for the *udicial district in which your address is located, or if your address is outside of the United States, for any judicial district in which Expedia, Inc. may be found, and that you will accept service of process from the party who reported your content, or that party's agent.
- 4. The following statement: "I swear, under penalty of perjury, that I have a good faith belief that the content identified above was removed or disabled as a result of a mistake or misidentification."

Sign the paper.

Send the written communication to the following address:

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Expedia, Inc.

Attn: IP/Trademark Legal Dept., DMCA Complaints 333 108th Avenue NE Bellevue WA 98004

OR you may fax it to: (425) 679-7251, Attn: IP/Trademark Legal Dept., DMCA Complaints For any additional questions regarding the DMCA process for Expedia, please contact us at (425) 679-3751.

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PATENT NOTICES

One or more patents owned by the Expedia Companies may apply to this Website and to the features and services accessible via the Website. Portions of this Website operate under license of one or more patents. Other patents pending.

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MAP TERMS

Your use of mapping available on this Website is governed by the Microsoft Terms of Use and Microsoft Privacy Statement and the Google Terms of Use and Google Privacy Statement. Microsoft and Google reserve the right to change their Terms of Use and Privacy Statements at any time, at their sole discretion. Please click here for additional information:

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GENERAL

These Terms of Use are governed by the Federal Arbitration Act, federal arbitration law, and for reservations made by U.S. residents, the laws of the state in which your billing address is located, without regard to principles of conflicts of laws. Use of this Website is unauthorized in any jurisdiction that does not give effect to all provisions of this Agreement, including, without limitation, this paragraph.

You agree that no joint venture, partnership, or employment relationship exists between you and the Expedia Companies as a result of this Agreement or use of this Website.

Our performance of this Agreement is subject to existing laws and legal process, and nothing contained in this Agreement limits our right to comply with law enforcement or other governmental or legal requests or requirements relating to your use of this Website or information provided to or gathered by us with respect to such use.

If any part of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired. Our failure or delay in enforcing any provision of this Agreement at any time does not waive our right to enforce the same or any other provision(s) hereof in the future.

This Agreement (and any other terms and conditions or policies referenced herein) constitutes the entire agreement between you and Expedia, Inc. with respect to this Website, our services and your dealings and relationships with us, and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between you and us. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial, arbitration or any other administrative proceedings to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

Fictitious names of companies, products, people, characters, and/or data mentioned on this Website are not intended to represent any real individual, company, product, or event.

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REGISTRATIONS

Seller of Travel: Expedia, Inc. is a registered seller of travel in each of the states listed below:

California registration number: 2029030-50

Florida registration number: ST-31901

Hawaii registration number: TAR-5461

lowa registration number: 601

Nevada registration number: 2002-0758

Washington registration number: 601975803

Registration as a seller of travel in California does not constitute the state's approval.

New York State Tax Registration:

Our New York sales tax vendor registration number through Travelscape (d/b/a Expedia Travel) is 880392667 and New York City hotel occupancy tax registration number through Travelscape (d/b/a Expedia Travel) is 033960.

Please click here for additional information:

New York State Certificate of Authority New York City Certificate of Authority

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SERVICE HELP

For quick answers to your questions or ways to contact us, visit our Customer Support Center. Or, you can write to us at:

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Attn: Customer Service

Expedia, Inc.

333 108th Avenue NE

Bellevue, WA 98004

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EXHIBIT 5

Hotwire Website Terms of Use

Revision Date April 17, 2019.

AGREEMENT BETWEEN CUSTOMER AND HOTWIRE, INC.

Our website ("Website") is provided solely to assist customers in gathering travel information, determining the availability of travel-related goods and services, making legitimate reservations or otherwise transacting business with travel suppliers, and for no other purposes. The terms "we," "us," "our" and "Hotwire" refer to Hotwire, Inc., a Delaware corporation, and its subsidiaries and corporate affiliates, including Travelscape, LLC, (collectively the "Hotwire Companies"), The term "you" refers to the customer visiting the Website and/or booking a reservation through us on this Website, or through our customer service agents.

This Website is offered to you conditioned upon your acceptance without modification of all the terms, conditions, and notices set forth below (collectively, the "Terms of Use" or "Agreement"). Please read the Terms of Use carefully, as they contain important information about limitations of liability and resolution of disputes through arbitration rather than in court. You should also read our Privacy Policy, which also governs your use of the Website, and is incorporated by reference in this Agreement. By accessing or using this Website, booking any reservations for travel products or services, or contacting our call center agents, you agree that the Terms of Use then in force shall apply. If you do not agree to the Terms of Use, please do not use or book any reservations through this Website or our call center agents.

USE OF THE WEBSITE

As a condition of your use of this Website, you warrant that

- 1. you are at least 18 years of age;
- 2. you possess the legal authority to create a binding legal obligation;
- 3. you will use this Website in accordance with these Terms of Use;

or for another person for whom you are legally authorized to act (a "Third Party");

- 5. you will inform such Third Party about the Terms of Use that apply to the reservations you have made on their behalf, including all rules and restrictions applicable thereto;
- 6. all information supplied by you on this Website is true, accurate, current and complete; and
- 7. if you have a Hotwire account, you will safeguard your account information and will supervise and be completely responsible for any use of your account by you and anyone other than you.

We retain the right at our sole discretion to deny access to anyone to this Website and the services we offer, at any time and for any reason, including, but not limited to, for violation of these Terms of Use.

DISPUTES; ARBITRATION

Hotwire is committed to customer satisfaction, so if you have a problem or dispute, we will try to resolve your concerns. But if we are unsuccessful, you or we may pursue claims as explained in this section.

To give us an opportunity to resolve informally any disputes between you and us arising out of or relating in any way to the Website, these Terms of Use, our Privacy Policy, any services or products provided, any dealings with our customer service agents, or any representations made by us ("Claims"), you agree to communicate your Claim to Hotwire by contacting Hotwire Customer Support or calling 1-877-787-7186. You agree not to bring any suit or to initiate arbitration proceedings until 60 days after the date on which you communicated your Claim to Customer Support have elapsed. If we are not able to resolve your Claim within 60 days, you may seek relief through arbitration or in small claims court, as set forth below.

You and Hotwire agree that any and all Claims will be resolved by binding arbitration, rather than in court, except that you and we may assert Claims on an individual basis in small claims court if they qualify. This includes any Claims you assert against us, our subsidiaries, travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement). This also

Case 4:20-cv-00371-O Document 61 Filed 10/19/20 Page 98 of 117 PageID 1640 includes any Claims that arose before you accepted these Terms of Use,

regardless of whether prior versions of the Terms of Use required arbitration.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including statutory damages, attorneys' fees and costs). The arbitrator must follow and enforce these Terms of Use.

Arbitrations will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA Consumer Rules. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, except as provided in this section. If your total Claims seek less than \$10,000, we will reimburse you for filing fees you pay to the AAA and will pay arbitrator's fees.

Any and all proceedings to resolve Claims will be conducted only on an individual basis and not in a class, consolidated, or representative action. The arbitrator will have authority to decide issues as to the scope of this arbitration agreement and the arbitrability of Claims. If for any reason a Claim proceeds in court rather than in arbitration, you and we each waive any right to a jury trial.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your Claims to "Hotwire Legal: Arbitration Claim Manager," c/o Expedia, Inc., 333 108_{th} Ave N.E. Bellevue, WA 98004. If we request arbitration against you, we will give you notice at the email address or street address you have provided. The AAA's rules and filing instructions are available at www.adr.org or by calling 1-800-778-7879.

This arbitration agreement shall be governed by and enforced in accordance with the Federal Arbitration Act and federal arbitration law. An arbitration decision may be confirmed by any court with competent jurisdiction.

PROHIBITED ACTIVITIES

to, price and availability of travel services), as well as the infrastructure used to provide such content and information, is proprietary to us or our suppliers and providers. While you may make limited copies of your travel itinerary (and related documents) for travel or service reservations booked through this Website, you agree not to otherwise modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell or re-sell any information, software, products, or services obtained from or through this Website. Additionally, you agree not to:

- 1. use this Website or its contents for any commercial purpose;
- 2. make any speculative, false, or fraudulent reservation or any reservation in anticipation of demand;
- 3. access, monitor or copy any content or information of this Website using any robot, spider, scraper or other automated means or any manual process for any purpose without our express written permission:
- 4. violate the restrictions in any robot exclusion headers on this Website or bypass or circumvent other measures employed to prevent or limit access to this Website;
- 5. take any action that imposes, or may impose, in our discretion, an unreasonable or disproportionately large load on our infrastructure;
- 6. deep-link to any portion of this Website (including, without limitation, the purchase path for any travel services) for any purpose without our express written permission; or
- 7. "frame", "mirror" or otherwise incorporate any part of this Website into any other website without our prior written authorization.

You may only use this Website to make legitimate requests to book the products or services offered (each, a "Request"), and shall not use this Website to make any speculative, false or fraudulent Requests, or any Requests in anticipation of demand.

It is a violation of law to place a Request in a false name or with an invalid credit card. Please be aware that even if you do not give us your real name, your Web browser transmits a unique Internet address to us that can be used by law enforcement officials to identify you. Fraudulent users will be prosecuted to the fullest extent of the law.

activity, Hotwire may cancel any travel or service reservations associated with your name, email address or account, and close any associated Hotwire accounts. If you have conducted any fraudulent activity, Hotwire reserves the right to take any necessary legal action and you may be liable for monetary losses to Hotwire, including litigation costs and damages. To contest the cancellation of a booking or freezing or closure of an account, please contact Hotwire Customer Service.

SUPPLIER RULES AND RESTRICTIONS

Additional terms of use will apply to your reservation and purchase of travel-related goods and services that you select. Please read these additional terms of use carefully. In particular, if you have purchased an airfare, please ensure you read the full terms and conditions of carriage issued by the Supplier, which can be found on the Supplier's website. You agree to abide by the terms of use of purchase imposed by any supplier with whom you elect to deal, including, but not limited to, payment of all amounts when due and compliance with the supplier's rules and restrictions regarding availability and use of fares, products, or services.

Airfare is only guaranteed once the purchase has been completed and the tickets have been issued. Airlines and other travel suppliers may change their prices without notice.

We reserve the right to cancel your booking if full payment is not received in a timely fashion.

For certain low-cost carriers, the price of your flight has been converted from a different currency for convenience purposes to provide you an estimate of the amount of the purchase in your local currency. As a result, when you book, the amount charged to your credit card by the airline may be slightly different due to currency fluctuations. Your statement may also include an applicable fee from your card issuer to process the transaction plus any applicable taxes for international purchases.

Federal law forbids the carriage of hazardous materials aboard aircraft in your luggage or on your person. A violation can result in five years'

Hazardous materials include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials. Examples: Paints, lighter fluid, fireworks, tear gases, oxygen bottles, and radio-pharmaceuticals. There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your luggage and certain smoking materials carried on your person.

You acknowledge that some third-party providers offering certain services and/or activities may require you to sign their liability waiver prior to participating in the service and/or activity they offer. You understand that any violation of any such supplier's rules and restrictions may result in cancellation of your reservation(s), in your being denied access to the applicable travel product or services, in your forfeiting any monies paid for such reservation(s), and/or in our debiting your account for any costs we incur as a result of such violation.

Hotwire is not liable for any costs incurred due to relocation.

PRIVACY

Hotwire believes in protecting your privacy. Please click here to review our current Privacy Policy, which also governs your use of the Website, and, as stated above, is incorporated by reference, to understand our practices: <u>Privacy Policy</u>.

PREPAID HOTEL RESERVATIONS

You acknowledge that the Hotwire Companies pre-negotiate certain room rates with hotel suppliers to facilitate the booking of reservations. You also acknowledge that the Hotwire Companies provide you services to facilitate such booking of reservations for a consideration (the "facilitation fee"). The room rate displayed on the Website is a combination of the pre-negotiated room rate for rooms reserved on your behalf by the Hotwire Companies and the facilitation fee retained by the Hotwire Companies for their services. You authorize the Hotwire Companies to book reservations for the total reservation price, which includes the room rate displayed on the Website, plus tax recovery charges, service fees, and where applicable, taxes on the Hotwire Companies' services. You agree that your credit card will be charged by the Hotwire Companies for the total reservation price. Upon submitting

including Travelscape, LLC, to facilitate hotel reservations on your behalf, including making payment arrangements with hotel suppliers.

You acknowledge that except as provided below with respect to tax obligations on the amounts we retain for our services, the Hotwire Companies do not collect taxes for remittance to applicable taxing authorities. The tax recovery charges on prepaid hotel transactions are a recovery of the estimated taxes (e.g. sales and use, occupancy, room tax, excise tax, value added tax, etc.) that the Hotwire Companies pay to the hotel supplier for taxes due on the hotel's rental rate for the room. The hotel suppliers invoice the Hotwire Companies for certain charges, including tax amounts. The hotel suppliers are responsible for remitting applicable taxes to the applicable taxing jurisdictions. None of the Hotwire Companies act as co-vendors with the supplier with whom we book or reserve our customer's travel arrangements. Taxability and the appropriate tax rate vary greatly by location. The actual tax amounts paid by the Hotwire Companies to the hotel suppliers may vary from the tax recovery charge amounts, depending upon the rates, taxability, etc. in effect at the time of the actual use of the hotel by our customers. We retain service fees as additional compensation in servicing your travel reservation. Service fees retained by the Hotwire Companies for their services vary based on the amount and type of hotel reservation.

You may cancel or change your prepaid hotel reservation (except for Hot Rate reservations, which are non-changeable and non-cancellable), but you will be charged the cancellation or change fee indicated in the rules and restrictions for the hotel reservation. If you do not cancel or change your reservation before the cancellation policy period applicable to the hotel you reserved, which varies by hotel (usually 24 to 72 hours) prior to your date of arrival, you will be subject to a charge equal to applicable nightly rates, tax recovery charges and service fees. In the event you do not show for the first night of the reservation and plan to check-in for subsequent nights in your reservation, you must confirm the reservation changes with us no later than the date of the first night of the reservation to prevent cancellation of your reservation.

You agree to pay any cancellation or change fees that you incur. In limited cases, some hotels do not permit changes to or cancellations of

restrictions for the hotel reservation. You agree to abide by the terms of use imposed with respect to your prepaid hotel reservations.

Sales, use, and/or local hotel occupancy taxes are imposed on the amounts that we charge for our services (service fee and/or facilitation fee) in certain jurisdictions. The actual tax amounts on our services may vary depending on the rates in effect at the time of your hotel stay.

Some hotel suppliers may require you to present a credit card or cash deposit upon check-in to cover additional expenses incurred during your stay. Such deposit is unrelated to any payment received by Hotwire for your hotel booking.

PAYMENT METHODS

All Booking Requests must be submitted with a major credit card unless otherwise expressly stated. The total price will be billed in the currency indicated on the booking screen.

Some banks and credit card companies impose fees for international transactions. If you are making a booking from outside of the United States on a US credit card, your bank may convert the payment amount to your local currency and charge you a conversion fee. This means the amount listed on your credit or bank card statement may be in your local currency and therefore a different figure than the figure shown on the billing summary page for a reservation booked on the Website. In addition, a foreign transaction fee may be assessed if the bank that issued your credit card is located outside of the United States. Booking international travel may be considered to be an international transaction by the bank or card company, since Hotwire may pass on your payment to an international travel supplier. The currency exchange rate and foreign transaction fee is determined solely by your bank on the day that they process the transaction. If you have any questions about these fees or the exchange rate applied to your booking, please contact your bank.

INTERNATIONAL TRAVEL

You are responsible for ensuring that you meet foreign entry requirements and that your travel documents, such as passports and visas (transit, business, tourist, and otherwise), are in order and any

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knowledge regarding foreign entry requirements or travel documents. We urge customers to review travel prohibitions, warnings, announcements, and advisories issued by the relevant governments prior to booking travel to international destinations.

Passport and Visa: You must consult the relevant Embassy or Consulate for this information. Requirements may change and you should check for up-to-date information before booking and departure. We accept no liability if you are refused entry onto a flight or into any country due to your failure to carry the correct and adequate passport, visa, or other travel documents required by any airline, authority, or country, including countries you may just be transiting through. This includes all stops made by the aircraft, even if you do not leave the aircraft or airport.

Health: Recommended inoculations for travel may change and you should consult your doctor for current recommendations before you depart. It is your responsibility to ensure that you meet all health entry requirements, obtain the recommended inoculations, take all recommended medication, and follow all medical advice in relation to your trip.

Disinsection: Although not common, most countries reserve the right to disinsect aircraft if there is a perceived threat to public health, agriculture or environment. The World Health Organization and the International Civil Aviation Organization have approved the following disinsection procedures: (1) spray the aircraft cabin with an aerosolized insecticide while passengers are on board or (2) treat the aircraft's interior surfaces with a residual insecticide while passengers are not on board. For more information,

see: http://ostpxweb.dot.gov/policy/safetyenergyenv/disinsection.htm.

BY OFFERING RESERVATIONS FOR TRAVEL PRODUCTS TO PARTICULAR INTERNATIONAL DESTINATIONS, HOTWIRE DOES NOT REPRESENT OR WARRANT THAT TRAVEL TO SUCH POINTS IS ADVISABLE OR WITHOUT RISK, AND IS NOT LIABLE FOR DAMAGES OR LOSSES THAT MAY RESULT FROM TRAVEL TO SUCH DESTINATIONS.

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LIABILITY DISCLAIMER

The Information, Software, Products and Services published on this Website may include inaccuracies or errors, including pricing errors. In particular, the Hotwire Companies and Hotwire Affiliates do not guarantee the accuracy of, and disclaim all liability for any errors or other inaccuracies relating to the information and description of the hotel, air, cruise, car and other travel products and services displayed on this Website (including, without limitation, the pricing, photographs, list of hotel amenities, general product descriptions, etc.). In addition, Hotwire expressly reserves the right to correct any pricing errors on our Website and/or pending reservations made under an incorrect price. In such event, if available, we will offer you the opportunity to keep your pending reservation at the correct price or we will cancel your reservation without penalty.

Hotel ratings displayed on this Website are intended as only general guidelines, and the Hotwire Companies and Hotwire

Case 4:20-cv-00371-O Document 61 Filed 10/19/20 Page 106 of 117 PageID 1648 Affiliates do not guarantee the accuracy of the ratings. The Hotwire

Companies, the Hotwire Affiliates and their respective suppliers make no guarantees about the availability of specific products and services. The Hotwire Companies, the Hotwire Affiliates and their respective suppliers may make improvements and/or changes on the Website at any time.

The Hotwire Companies, the Hotwire Affiliates and their respective suppliers make no representations about the suitability of the information, software, products and services contained on this Website for any purpose, and the inclusion or offering of any products or services on this Website does not constitute any endorsement or recommendation of such products or services by the Hotwire Companies or the Hotwire Affiliates. All such information, software products, and services are provided "as is" without warranty of any kind. The Hotwire Companies, the Hotwire Affiliates and their respective suppliers disclaim all warranties and conditions that this Website, its servers or any email sent from the Hotwire Companies, the Hotwire Affiliates and/or their respective suppliers are free of viruses or other harmful components. The Hotwire Company, the Hotwire Affiliates and their respective suppliers hereby disclaim all warranties and conditions with regard to this information, software, products and services, including all implied warranties and conditions of merchantability, fitness for a particular response, title and non-infringement.

The carriers, hotels and other suppliers providing travel or other services on this Website are independent contractors and not agents or employees of the Hotwire Companies or the Hotwire Affiliates. The Hotwire Companies and the Hotwire Affiliates are not liable for the acts, errors, omissions, representations, warranties, breaches or negligence of any such suppliers or for any personal injuries, death, property damage, or other damages or expenses resulting therefrom. The Hotwire Companies and the Hotwire Affiliates have no liability and will make no refund in the event of any delay, cancellation, overbooking, strike, force majeure or other causes beyond their direct control, and they have no responsibility for any additional expenses, omissions, delays, re-routing or acts of any government or authority.

In no event shall the Hotwire Companies, the Hotwire Affiliates and/or their respective suppliers be liable for any direct, indirect, punitive, incidental, special or consequential damages arising out of, or in any way connected with, your access to, display of or use of this Website or with the delay or inability to access, display or use this Website (including, but not limited to, your reliance upon opinions appearing on this Website; any computer viruses, information, software, linked sites, products and services obtaining through this Website; or otherwise arising out of the access to, display of or use of this Website) whether based on a theory of negligence, contract, tort, strict liability, consumer protection statutes, or otherwise, and even if the Hotwire Companies, the Hotwire Affiliates and/or their respective suppliers have been advised of the possibility of such damages.

If, despite the limitation above, the Hotwire Companies and the Hotwire Affiliates or their respective Providers are found liable for any loss or damage which arises out of or in any way connected with any of the occurrences described above, then the Hotwire Companies, the Hotwire Affiliates, or their respective Providers liabilities will in no event exceed, in the aggregate, the greater of (a) the fee or charge you paid to Hotwire in connection with such transaction(s) on this Website, or (b) One-Hundred Dollars (US\$100.00) or the equivalent in local currency.

The limitation of liability reflects the allocation of risk between the parties. The limitations specified in this section will survive and apply even if any limited remedy specified in these Terms of Use is found to have failed of its essential purpose. The limitations of liability provided in these Terms of Use inure to the benefit of the Hotwire Companies and the Hotwire Affiliates and/or their respective Providers.

Some states—to the extent their law might be deemed to apply, do not allow the limitation of liability, so the foregoing limitations might not apply to you.

INDEMNIFICATION

You agree to defend and indemnify the Hotwire Companies, the Hotwire Affiliates, and/or their respective suppliers and any of their officers,

action, demands, recoveries, losses, damages, fines, penalties or other costs or expenses of any kind or nature including but not limited to reasonable legal and accounting fees, brought by third parties as a result of:

- 1. your breach of these Terms of Use or the documents referenced herein;
- 2. violation of any law or the rights of a third party;
- 3. your use of this Website; or
- 4. your use of this Website for, or on behalf of, a Third Party.

LINKS TO THIRD PARTY WEBSITES

This Website may contain hyperlinks to websites operated by parties other than Hotwire. Such hyperlinks are provided for your reference only. We do not control such websites and are not responsible for their contents or the privacy or other practices of such websites. Further, it is up to you to take precautions to ensure that whatever links you select or software you download (whether from this Website or other websites) is free of such items as viruses, worms, trojan horses, defects and other items of a destructive nature. Our inclusion of hyperlinks to such websites does not imply any endorsement of the material on such websites or any association with their operators.

TERMINATION OF USAGE

User access to all or part of this Website may be terminated or suspended at any time, without notice and for any reason.

SOFTWARE AVAILABLE ON THIS WEBSITE

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REVIEWS, COMMENTS, PHOTOS AND OTHER SUBMISSIONS

We appreciate hearing from you. Please be aware that by submitting

otherwise, including any hotel reviews, photos, videos, questions, comments, suggestions, ideas or the like contained in any submissions (collectively, "Submissions"), you grant Hotwire and the affiliated, cobranded and/or linked website partners through whom we provide service (collectively, "Hotwire Affiliates"), a nonexclusive, royalty-free, perpetual, transferable, irrevocable and fully sub-licensable right to (a) use, reproduce, modify, adapt, translate, distribute, publish, create derivative works from and publicly display and perform such Submissions throughout the world in any media, now known or hereafter devised; and (b) use the name that you submit in connection with such Submission. You acknowledge that Hotwire may choose to provide attribution of your comments or reviews (for example, listing your name and hometown on a hotel review that you submit) at our discretion, and that such submissions may be shared with our supplier partners. You further grant Hotwire the right to pursue at law any person or entity that violates your or Hotwire's rights in the Submissions by a breach of these Terms of Use. You acknowledge and agree that Submissions are nonconfidential and non-proprietary. You expressly waive any and all 'moral rights' (including rights of attribution or integrity) that may subsist in your Submissions and agree that you have no objection to the publication, use, modification, deletion or exploitation of your Submissions by us, the Hotwire Affiliates or any of our partners or licensees. We take no responsibility and assume no liability for any Submissions posted or submitted by you. We have no obligation to post your comments; we reserve the right in our absolute discretion to determine which comments are published on the Website. If you do not agree to these terms of use, please do not provide us with any Submissions. Please note that we assume no responsibility for reviewing unsolicited ideas for our business (like product or advertising ideas), and will not incur any liability as a result of any similarities between those ideas and materials that may appear in future Hotwire programs.

You are fully responsible for the content of your Submissions (specifically including, but not limited to, reviews posted to this Website). You are prohibited from posting or transmitting to or from this Website: (i) any unlawful, threatening, libelous, defamatory, obscene, pornographic, or other material or content that would violate rights of publicity and/or privacy or that would violate any law; (ii) any commercial

advertising, or marketing of any good or services); and (iii) any material or content that infringes, misappropriates or violates any copyright, trademark, patent right or other proprietary right of any third party. You shall be solely liable for any damages resulting from any violation of the foregoing restrictions, or any other harm resulting from your posting of content to this Site. You acknowledge that Hotwire may exercise its rights (e.g. use, publish, delete) to any content you submit without notice to you. If you submit more than one review for the same hotel, only your most recent submission is eligible for use.

From time to time we may offer customers incentives to leave hotel reviews (e.g. discount coupon/entry into prize draws etc.) As it is important to us that hotel reviews are impartial and honest, these incentives will be available to customers regardless of whether the hotel review is positive or negative.

All photos submitted are subject to our Photo Submission Guidelines stated below. Hotwire claims no ownership, affiliation with, or endorsement of any photos that are submitted by end users through our sites.

Hotwire's policies with respect to claims by third parties that the content of the Website, including the content of any Submissions, infringes the copyrights owned by said third party can be found above in the Copyright Complaint Policy section of these Terms of Use.

Photo Submission Guidelines

Any photos you submit must be:

- On topic All photos must be relevant to accommodation, restaurant, location, or general travel experiences.
- Community/family friendly
- Do not submit any photos or materials that are illegal, obscene, pornographic, profane, vulgar, offensive or insulting.
- Do not submit photos or materials that invade the privacy or violate any personal right of any person or entity.
- Do not submit photos or information about children or any third parties without their consent (or their parent's consent in the case of a child under 13 years of age).
- Children under 13 may not submit photos or other materials.

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- Do not submit photos from any other source (personal or commercial).
- Do not submit photos that infringe the copyright, trademark, or other property right of any third party.
- Non-commercial Do not submit photos that include logos, branding, promotional material, or any other content intended for commercial purposes.
- No harmful files Do not submit photos that contain viruses or other harmful code that is either intended or may result in damage to the computers and systems of Hotwire and/or those using it.

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If you are aware of an infringement of our brand, please let us know by emailing us at exp-copyright@hotwire.com. We only address messages concerning brand infringement at this email address.

Account Termination

In accordance with the Digital Millennium Copyright Act ("DMCA") and other applicable law, Hotwire has adopted a policy of terminating, in appropriate circumstances and at Hotwire Inc.'s sole discretion, subscribers or account holders who are deemed to be repeat infringers. Hotwire may also at its sole discretion limit access to the Website and/or terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement. If you believe that an account holder or subscriber is a repeat infringer, please provide information sufficient for us to verify that the account holder or subscriber is a repeat infringer when filing your notice.

NOTICE OF INFRINGING MATERIAL

If you believe in good faith that materials hosted by us infringe your copyright, you (or your agent) may send us a written notice that includes the following information. Please note that we will not process your

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misrepresentations in your notice regarding whether content or activity is infringing may expose you to liability for damages.

- 1. A clear identification of the copyrighted work you claim was infringed.
- 2. A clear identification of the material you claim is infringing on the Website, such as a link to the infringing material.
- 3. Your address, email address and telephone number.
- 4. A statement that you have a "good faith belief that the material claimed as copyright infringement is not authorized by the copyright owner, its agent or the law.
- 5. A statement that "the information on the notification is accurate, and under penalty of perjury, the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- 6. A signature by the person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You may send us your notice by email to exp-copyright@hotwire.com, by fax to (425) 679-7251, Attn: IP/Trademark Legal Dept., DMCA Complaints, or by using the contact information below.

COUNTERNOTICES

If material you have posted has been taken down, you may file a counter-notification by fax or regular mail that sets forth the items specified below. You may want to seek legal counsel prior to doing so. Please include the following details:

- 1. Identification of the specific content that was removed or disabled and the location that content appeared on Hotwire's Website. Please provide the URL address if possible.
- 2. Your name, mailing address, telephone number and email address.
- 3. A statement that you consent to the jurisdiction of Federal District Court for the judicial district in which your address is located, or if your address is outside of the United States, for any judicial district in which Hotwire, Inc. may be found, and that you will accept service of process from the party who reported your content, or that party's agent.
- 4. The following statement: "I swear, under penalty of perjury, that I have a good faith belief that the content identified above was removed or disabled as a result of a mistake or misidentification."

Sign the paper. Send the written communication to the following address:

Hotwire, Inc.

Attn: IP/Trademark Legal Dept., DMCA Complaints 333 108th Avenue NE Bellevue WA 98004

OR you may fax it to: (425) 679-7251, Attn: IP/Trademark Legal Dept., DMCA Complaints

For any additional questions regarding the DMCA process for Hotwire, please contact us at (425) 679-3751.

PATENT NOTICES

One or more patents owned by the Hotwire Companies may apply to this Website and to the features and services accessible via the Website. Portions of this Website operate under license of one or more patents. Other patents pending.

GENERAL

Your use of mapping available on this Website is governed by the Microsoft Terms of Use and Microsoft Privacy Statement and the Google Terms of Use and Google Privacy Statement. Microsoft and Google reserve the right to change their Terms of Use and Privacy Statements at any time, at their sole discretion. Please click here for additional information:

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http://www.google.com/privacy/privacy-policy.html
http://www.google.com/enterprise/earthmaps/legal/us/maps_AUP.html
http://www.maps.google.com/help/legalnotices_maps.html
http://maps.google.com/help/terms_maps.html

These Terms of Use are governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of Delaware, without regard to principles of conflicts of laws.

Case 4:20-cy-00371-O Document 61 Filed 10/19/20 Page 115 of 117 PageID 1657 You agree that no joint venture, partnership, or employment relationship

exists between you and the Hotwire Companies as a result of this Agreement or use of this Website.

Our performance of this Agreement is subject to existing laws and legal process, and nothing contained in this Agreement limits our right to comply with law enforcement or other governmental or legal requests or requirements relating to your use of this Website or information provided to or gathered by us with respect to such use.

If any part of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired. Our failure or delay in enforcing any provision of this Agreement at any time does not waive our right to enforce the same or any other provision(s) hereof in the future.

Fictitious names of companies, products, people, characters, and/or data mentioned on this Website are not intended to represent any real individual, company, product, or event.

Any rights not expressly granted herein are reserved.

MISCELLANEOUS

The captions in these Terms of Use are only for convenience and do not, in any way, limit or otherwise define the terms and provisions of these Terms of Use.

None of the Hotwire Companies or the Hotwire Affiliates is responsible for any errors or delays in responding to a Request caused by an incorrect email address provided by you or other technical problems beyond their control.

ENTIRE AGREEMENT

This Agreement, together with the Travel Product Rules and Regulations, Privacy Policy, and any other terms and conditions referenced herein, constitutes the entire agreement between you and Hotwire with respect to this Website, our services and your dealings and relationships with us, and it supersedes all prior or contemporaneous

Case 4:20-cv-00371-O Document 61 Filed 10/19/20 Page 116 of 117 PageID 1658 communications and proposals, whether electronic, oral, or written,

between you and us. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial, arbitration or any other administrative proceedings to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

REGISTRATIONS

Hotwire, Inc., a Delaware corporation, is located at 114 Sansome Street, Suite 400, San Francisco, CA 94104. More information about Hotwire may be found at our Company Overview page.

Seller of Travel: Hotwire is a registered seller of travel in each of the states listed below:

California registration number: 2053390-50

Florida registration number: ST35196

Iowa registration number: 861

Nevada registration number: 20030209

Washington registration number: 602-218-781

Hawaii registration number: TAR-6912

Registration as a seller of travel in California does not constitute the state's approval.

New York Tax Registration: Hotwire's New York sales tax vendor registration number is 742938016 and its New York City hotel occupancy tax registration number is 0033922.

Please click here for additional information: New York State certificate

SERVICE HELP

For quick answers to your questions or ways to contact us, visit our <u>Customer Support Center</u> or call us at 1-866-HOTWIRE. Or, you can write to us at:

Attn: Customer Service

Hotwire, Inc.

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San Francisco, CA 94126

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Hotels Cars Flights Full site Legal

For all prices: Availability is limited and rates are subject to change. Prices are dynamic and vary based on date of booking, length of stay and hotel class. Prices do not include taxes and fees. Hotwire is different from retail travel sites. With Hotwire you enter the date and location. Hotel revealed only after booking.

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^{*}Savings based on the lowest published rate we've found on leading retail travel sites in the last 24-48 hours for the same neighborhood, hotel class, and stay dates.